

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

DR. IRVING RUST, on behalf of himself, his patients and all others similarly situated, DR. MELVIN PADAWER, on behalf of himself, his patients, and all others similarly situated, MEDICAL AND HEALTH RESEARCH ASSOCIATION OF NEW YORK CITY, INC., PLANNED PARENTHOOD OF NEW YORK CITY, INC., PLANNED PARENTHOOD OF WESTCHESTER/ROCKLAND, and HEALTH SERVICES OF HUDSON COUNTY, NEW JERSEY,

Petitioners,

—v.—

DR. LOUIS SULLIVAN, or his successor, Secretary of the United States Department of Health and Human Services, *Respondents.*

THE STATE OF NEW YORK, THE CITY OF NEW YORK,
THE NEW YORK CITY HEALTH & HOSPITALS CORP.,

Petitioners,

—v.—

DR. LOUIS SULLIVAN, or his successor, Secretary of the United States Department of Health and Human Services, *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**BRIEF OF AMICI CURIAE NOW LEGAL DEFENSE AND
EDUCATION FUND AND 117 ORGANIZATIONS
COMMITTED TO WOMEN'S EQUALITY
IN SUPPORT OF THE PETITIONERS**
(List of *Amici Curiae* on inside cover)

Sarah E. Burns
Alison Wetherfield
NOW LEGAL DEFENSE AND
EDUCATION FUND
99 Hudson Street
12th Floor
New York, New York 10013

John H. Hall
Counsel of Record
Geoffrey H. Coll
Claudia A. Lewis
Randi J. Roberts
Mallika Dutt
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022
Attorneys for Amici Curiae

AMICI CURIAE

Abortion Rights Mobilization
ActionAIDS
All Peoples Congress
American Association of University Women
American Humanist Association
American Jewish Committee
Americans for Religious Liberty
Asian American Legal Defense and Education Fund
Association for Voluntary Surgical Contraception
Association for Women in Psychology
AWARE
Beverly Hills Bar Association
Black Women's Agenda, Inc.
Bradford County Coalition for Choice
Brooklyn Women's Political Caucus
California Women Lawyers
Canadian Abortion Rights Action League
Center for Law & Social Justice
Center for Public Representation
Colorado Women's Bar Association
Columbia-Greene Rape Crisis Center
Committee for Hispanic Children and Families
Committee to Defend Reproductive Rights
CHOICE
Disabled in Action of Metropolitan New York
Equal Rights Advocates, Inc.
Federation of Feminist Women's Health Centers
Feminist Institute
Hispanic Health Council
Human Rights Campaign Fund
Institute for Women's Policy Research

International Agency for Minority Artist Affairs
Jessie Smith Noyes Foundation
League of Women Voters of the United States
MADRE
Men of All Colors Together New York
Mobilization for Youth Health Services, Inc.
Ms. Foundation For Women
My Sister's Place Washington, D.C.
My Sister's Place New York
Nation Institute
National Abortion Rights Action League
National Association of Commissions for Women
National Center for Lesbian Rights
National Coalition Against Domestic Violence
National Council of Jewish Women
National Council for Research on Women
National Latina Health Organization
National Law Center on Homelessness and Poverty
National Lawyers Guild
National Medical Association
National Organization for Women
National Republican Coalition for Choice
National Woman Abuse Prevention Project
National Women's Health Network
National Women's Law Center
National Women's Political Caucus
New Directions for Women
New Jewish Agenda
New York Asian Women's Center

New York City Coalition for Women's Mental Health
New York Coalition of 100 Black Women
New York Pro-Choice Coalition
New York State Republican Family Committee
New York University Law Women
New York Women in Criminal Justice
Northwest Women's Law Center
Older Women's League
Organization for Obstetric, Gynecologic, and Neonatal Nurses
Pathfinder Fund
Pembroke Center for Teaching and Research on Women
Brown University
Project Choice: AIDS Education for Women of Color
Project on Women & Disability
Queen's Bench Bar Association of the San Francisco Bay Area
Racism & Homophobia in the Media Project
Radical Women
Rainbow Lobby, Inc.
Reproductive Health Services
San Francisco Women Lawyers Alliance
Santa Fe Health Education Project
Sex Information and Education Council of the United States
Southern California Women's Law Center
Students and Youth Against Racism
Students Organizing Students
Tucson Women's Commission
Union of American Hebrew Congregations
United Auto Workers District 65
Unitarian Universalist Association

Unitarian Universalist Women's Federation
United Church Board for Homeland Ministries
United Synagogue of America
VOICES In Action
Voters for Choice
Woman's Law Project
Women and AIDS Coalition
Women for Racial and Economic Equality
Women in Crisis Committee
Womenspace
Women USA
Women's Bar Association of Illinois
Women's Bar Association of Massachusetts
Women's Bar Association of the State of New York
Women's City Club of New York, Inc.
Women's Educational Center, Inc.
Women's Equal Rights Legal Defense and Education Fund
Women's Health Action and Mobilization
Women's International Resource Exchange
Women's Legal Defense Fund
Women's Project
Women's Studies Program Hunter College, City University of New York
Women's Studies Program Smith College
Women's Studies Program Yale University
Workers World Party
Worldwatch
Yale Journal of Law and Feminism
YWCA of the USA
Zero Population Growth

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INTEREST OF *AMICI CURIAE*

This brief is filed on behalf of NOW Legal Defense and Education Fund and 117 organizations which share a common concern for the protection of women's rights, and in particular the fundamental right to reproductive autonomy, necessary to fulfill the Constitution's promises of liberty and equality for all. These organizations, representing millions of individual women and men from diverse backgrounds, have joined together to urge this Court to grant the relief sought by Petitioners and permanently enjoin the Title X regulations at issue. They believe the regulations profoundly impede exercise of the fundamental right to reproductive decisionmaking essential to the health and the lives of the millions of low income women who are served by federally funded family planning clinics. (Further statements of interest of *amici* are set forth at Appendix A.)

Amici have the consent of the parties to file this brief. Letters of consent have been filed separately with this Court.

SUMMARY OF ARGUMENT

The Title X regulations at issue prohibit abortion counseling and require referral for prenatal care only, and thus impermissibly burden women's constitutionally protected right to reproductive decisionmaking. That unconstitutional burden translates into concrete risks to the health and the lives of poor women—a disproportionate number of whom are young women and women of color—who are served by Title X clinics.

Under the guise of encouraging childbirth, the regulations prevent women seeking help at Title X clinics from receiving complete and unbiased medical advice about reproductive options. The ban on abortion information puts at risk the health and the lives of pregnant women, particularly those for whom complicating physical conditions make abortion a critical medical option. The regulations thus affirmatively interfere with a woman's constitutionally protected decision, informed by her physician, of whether or not to carry her

pregnancy to term. The regulations also impermissibly infringe the basic first amendment right of the women served by Title X clinics to receive accurate reproductive health information from their health care providers. Finally, the regulations deprive women of equal protection under the law because they discriminate on the basis of gender and do so in a way that implicates a woman's fundamental right to choose abortion and to receive information essential to informed reproductive health care.

The governmental purpose in enacting the regulations—to encourage childbirth by curtailing access to information about abortion and abortion services—and the regulatory scheme devised to effect that purpose cannot survive strict scrutiny. The scheme cannot even stand as a rational means to achieve the government's purpose, given that the regulations both contravene the aim of Title X to promote public health and mandate violations of accepted medical practice.

Amici respectfully urge this Court to reject, as it has in the past, this blatant attempt to interfere with constitutionally protected reproductive decisions.

ARGUMENT

I. THE REGULATIONS UNDULY BURDEN A WOMAN'S FUNDAMENTAL PRIVACY RIGHT TO MAKE INFORMED REPRODUCTIVE DECISIONS FREE FROM UNWARRANTED GOVERNMENTAL INTERFERENCE.

The regulations prevent the women served by Title X clinics from freely and independently deciding whether or not to carry a pregnancy to term, as is their right under *Roe v. Wade*, 410 U.S. 113 (1973), and cases following *Roe*. By suppressing all mention of abortion while simultaneously compelling referral for prenatal care, the regulations impermissibly intrude into the physician-patient dialogue concerning reproductive options.¹ Through the funding mech-

¹ The regulation's ban on abortion counseling and referral affects not only women who are already pregnant, but also women using Title X family planning services for non-pregnancy related needs. See *infra* p. 20 & note 39.

anism, they create significant obstacles to the constitutionally protected right of women seeking health care at Title X clinics to decide, with the necessary information at their disposal, whether or not to carry pregnancies to term.

The Court has recognized that if the sphere of "liberty" guaranteed under the due process clauses of the fifth and fourteenth amendments is to "extend[] to women as well as to men," women must have the autonomy to decide whether and when to bear children, *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 772 (1986), and to be free from unwarranted governmental intrusion into "matters so fundamentally affecting a person as the decision whether to bear or beget a child," *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972). See *Hodgson v. Minnesota*, 58 U.S.L.W. 4957, 4961 (U.S. June 25, 1990) & 4968 (O'Connor, J., concurring); *Harris v. McRae*, 448 U.S. 297, 312-318 (1980); *Carey v. Population Services International*, 431 U.S. 678, 685, 687 (1977); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973); *Griswold v. Connecticut*, 381 U.S. 479, 502-03 (1965) (White, J., concurring). Absent the right to decide whether or not to terminate a pregnancy, the freedom to make the child-bearing decision would be hollow.²

² Because of advances in modern medicine, no bright line can be drawn between the decision to abort and the decision not to conceive. Both oral contraceptives and the intrauterine device operate after fertilization. See R. Hatcher, E. Guest, F. Stewart, J. Trussell, S. Bowen & W. Cates, *Contraceptive Technology* 252-53, 377 (14th rev. ed. 1988). Moreover, no method of birth control is 100 percent effective. See Jones & Forrest, *Contraceptive Failure Rates in the United States*, 21 Fam. Plan. Persp. 103 (1989). The failure rates for contraceptives used for a 1-year period are as follows: the Pill-6.2%; the condom-14.2%; the diaphragm-15.6%; the rhythm method-16.2%; and spermicides-26.3%. *Id.* at 109. A study of women who had abortions in 1987 revealed that 51.3% had been using a contraceptive method during the month in which they became pregnant. Henshaw & Silverman, *The Characteristics and Prior Contraceptive Use of U.S. Abortion Patients*, 20 Fam. Plan. Persp. 158, 167 (1988).

Furthermore, because of the high risks of sexual violence, no woman of child-bearing capacity is safe from an unwanted pregnancy. See Federal

Recognizing that a woman needs medical advice to decide whether or not to continue a pregnancy, the Court has carefully protected the physician's role in the woman's decision-making process. See, e.g., *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 447 (1983). Because her decision is "inherently, and primarily, a medical decision," *Roe v. Wade*, 410 U.S. 113, 153 (1973), and "an important and often a stressful one," *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 67 (1976), it is "desirable and imperative that [the decision] be made with full knowledge of its nature and consequences," *id.* Only by providing pregnant women with all the medical facts that bear upon the decision, can physicians assist women to make *informed* reproductive choices about one of the most important decisions in life.

For all women, pregnancy entails "profound physical, emotional and psychological consequences." *Michael M. v. Sonoma County Superior Court*, 450 U.S. 464, 471 (1981) (Rehnquist, J.). For many women, pregnancy, labor and delivery pose significant medical risks, particularly when caesarean sections account for one out of four deliveries. See D. Danforth, M. Hughey & A. Wagner, *The Complete Guide to Pregnancy* 228-31 (1983). The medical risks associated with carrying pregnancy to term should not be underestimated: of every ten women who experience pregnancy and childbirth, six are treated for some medical complication, and three are treated for major complications. See R. Gold, A. Kenney & S. Singh, *Blessed Events and the Bottom Line: Financing Maternity Care in the United States* 10 (1987).

In comparison, legal abortion is safer than childbirth. Less than one percent of all abortion patients experience a major complication associated with the procedure. See The Alan

Bureau of Investigation, *Uniform Crime Reports for the United States* 6, 13-15 (1987) (in 1987, one forcible rape every six minutes); N.Y. Times, Sept. 28, 1987, at B5, col. 1 (113,000 cases of child sexual abuse reported in 1985); S. Apeton, *Sexual Assault Among Adolescents* 130-34 (1983) (very high incidence of date rape among adolescents); D. Finklehor & K. Yllo, *License to Rape: Sexual Abuse of Wives* 6-8 (1985) (estimating 10-14% of all married women experience marital rape).

Guttmacher Institute, *Abortion and Women's Health: A Turning Point for America?* 32 (1990). At eight weeks of gestation or earlier, the risk of death from abortion is about 20 times lower than that of childbirth; at no point during pregnancy is abortion more dangerous than childbirth. See LeBolt, Grimes & Cates, *Mortality from Abortion and Childbirth: Are the Populations Comparable?*, 248 J. Am. Med. A. 188, 191 (1982).

As the primary source of federal support for family planning and reproductive health services, funding over 3,900 clinics nationwide, Title X served 4.3 million low income women in 1988, with a target population consisting of an estimated 14.5 million women at risk of unintended pregnancy, including 5 million adolescents between the ages of 15 and 19. Note, *The Title X Family Planning Gag Rule: Can the Government Buy Up Constitutional Rights?*, 41 Stan. L. Rev. 401, 408 (1989) (collecting sources). Thirty percent of these women are women of color, see The Alan Guttmacher Institute, *Organized Family Planning Services in the United States 1981-1983* 28, 30 (1984), and eighty percent have incomes below 150 percent of the poverty line, see Declaration of Dr. Stanley Henshaw, Deputy Director of Research, The Alan Guttmacher Institute, ¶ 18 (194JA).³

The right to make informed decisions concerning reproductive health care is particularly important for the low-income women served by Title X. The communities in which they live suffer from disproportionately high rates of teenage pregnancy and a myriad of diseases (high blood pressure, hypertension, diabetes, cancer, sickle cell anemia and AIDS) that increase the risks associated with pregnancy.⁴ Pregnant teen-

3 Citations to the joint appendix that accompanies the Petitioners' Briefs are made to the page number therein as "____ JA." Citations to the appendix that accompanied the Petitions for Writ of Certiorari are made to the page number therein as "____ a." Citations to the joint appendix filed in the Second Circuit are made to the page number therein as "____ A."

4 See generally M. Rudov & N. Santangelo, *Health Status of Minorities and Low-Income Groups* (1979). The AIDS epidemic has particularly severe consequences for these communities. A recent study predicts that by

age women are twenty-four times more likely to die from childbirth than from a first trimester abortion. Carlson, *Abortion's Hardest Cases*, Time, July 9, 1990, at 22, 25. Black women, disproportionately represented in low-income communities,⁵ are nearly three times more likely to die from complications of pregnancy or childbirth than are white women. U.S. Dep't of Health and Human Services, *Health: United States 1989*, at 33 (1990).

By prohibiting any mention of abortion, *see* 42 C.F.R. §§ 59.8(a)(1)-(4) (1989), the Title X regulations deprive low income women of full health care counseling and information critical to their reproductive decision-making and treatment. Section 59.8 of the regulations forbids practitioners in Title X clinics from informing their patients either of the availability of abortion or where abortion-related information can be obtained. 42 C.F.R. § 59.8(a)(1) (1989). Even when women request information about abortion, they may be told only that "the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion." 42 C.F.R. § 59.8(b)(5) (1989). Furthermore, the regulations do not simply censor abortion-related speech: they require that pregnant women be given a list of health care providers "that promote the welfare of mother and unborn child." 42 C.F.R. § 59.8(a)(2) (1989). This refer-

1991, AIDS will become one of the five leading causes of death among women in the childbearing years nationwide. Chu, Buehler & Berkelman, *Impact of Human Immunodeficiency Virus Epidemic on Mortality in Women of Reproductive Age, United States*, 264 J. Am. Med. A. 225 (1990). The racial disparities uncovered by the study are dramatic: in 1988, AIDS killed nine times as many black women as white women. *Id.* at 226. AIDS is already the leading killer of black women of childbearing years in New York and New Jersey. *Id.* at 227.

Pregnancy both accelerates the course of AIDS in a child-bearing woman and poses a 30-50% risk that her newborn baby will be HIV-infected. *See* Minkoff, *Care of Pregnant Women Infected With Human Immunodeficiency Virus*, 258 J. Am. Med. A. 2714 (1987).

⁵ In 1984, 32.3% of Black women and 26.4% of Hispanic women lived below the poverty level, as compared to 11.5% of white women. Wilson, "Women and Poverty: A Demographic Overview," in *Women, Health and Poverty* 26 (C. Perales & L. Young eds. 1988).

ral list must include all available prenatal care providers that do not perform abortions, and it cannot include any health care providers that offer abortion as their "principal business." 42 C.F.R. § 59.8(a)(3) (1989).

While the government may implement "a value judgment favoring childbirth over abortion . . . by the allocation of public funds," *Maher v. Roe*, 432 U.S. 464, 474 (1977), it cannot, absent a compelling justification, place "obstacles—absolute or otherwise—in the pregnant woman's path to an abortion." *Id.* By altering medical counseling through withholding information concerning abortion and prescribing information designed to cause women to carry to term, the regulations erect significant obstacles to women's reproductive decisionmaking, hidden but nevertheless very real to the women served by Title X. The regulations' intrusion into the physician-patient dialogue impermissibly crosses the line between "state encouragement of an alternative activity consonant with legislative policy" and "direct state interference with a protected activity." *Maher*, 432 U.S. at 475.

Unlike the selective subsidies of childbirth upheld in *Maher v. Roe*, 432 U.S. 464 (1977), and *Harris v. McRae*, 448 U.S. 297 (1980), and the selective allocation of public hospitals and staffs upheld in *Webster v. Reproductive Health Services*, 109 S. Ct. 3040, 3052-53 (1989), the Title X regulations seek to encourage childbirth by affirmatively impairing women's reproductive choice. *Maher* and *McRae* involved refusals to fund abortions,⁶ not governmental schemes to interfere with a woman's decisionmaking process by withholding information and providing misinformation. In *Reproductive Health Services v. Webster*, 851 F.2d 1071, 1080 (8th Cir. 1988) (en banc), the Eighth Circuit distinguished Missouri's ban on "encouraging or counseling" abortion from the restrictions in *Maher* and *McRae*, declaring that it could

⁶ In *Maher*, the Court observed that the statute at issue "imposed no restriction on access to abortions that was not already there." 432 U.S. at 474. Similarly, the Court noted in *McRae* that the funding restriction left an indigent woman "with at least the same range of choice in deciding whether to obtain a[n] . . . abortion as she would have had if Congress had chosen to subsidize no health care costs at all." 448 U.S. at 317 (emphasis added).

"perceive of few obstacles more burdensome to the right to decide than a state-imposed blackout on the information necessary to make a decision."⁷ The Title X regulations present an *a fortiorari* case, for they not only impose a blackout, but they also compel Title X health care providers to transmit skewed information that will mislead Title X patients into carrying pregnancies to term.

The Title X regulations are an even more serious interference in the physician-patient dialogue than were the requirements struck down in *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 444 (1983), that compelled health care providers to disseminate information "designed to influence the woman's informed choice between abortion or childbirth."⁸ The Title X regulations obstruct the decisionmaking process more aggressively than did the Pennsylvania statute struck down in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986), which required physicians to provide their pregnant patients with a description of fetal development and a list of agencies offering alternatives to abortion.⁹

7 The Court did not address the constitutionality of Missouri's ban on counseling in *Webster v. Reproductive Health Services*, 109 S. Ct. 3040 (1989). The issue was dismissed as moot because the State interpreted the restriction as directed not at the conduct of any physician or health care provider, but only at those responsible for expending funds. *Id.* at 3053-3054.

8 In *Akron*, the Court held that by forcing physicians to furnish all their pregnant patients with an "inflexible list of information," the ordinance "unreasonably . . . placed 'obstacles in the path of the doctor upon whom [a woman is] entitled to rely for advice in connection with her decision.' " *Akron*, 462 U.S. at 444-445 (quoting *Whalen v. Roe*, 429 U.S. 589, 604 n.33 (1977)). The Court reasoned that "full vindication of the woman's fundamental right [to reproductive choice] necessarily requires that her physician be given 'the room he needs to make his best medical judgment.' " *Id.* at 427 (quoting *Doe v. Bolton*, 410 U.S. 179, 192 (1973)). That room includes the physician's discretion to provide her pregnant patient with information relevant to her particular needs, *id.* at 443, when "both assisting the woman in the decisionmaking process and implementing her decision should she choose abortion," *id.* at 427.

9 The Court described these requirements as "an outright attempt to wedge Pennsylvania's message discouraging abortion into the privacy of the informed consent dialogue between the woman and her physician." *Thorn-*

Contrary to professional standards that require balanced counseling and discussion of the full range of options to which a woman is entitled when pregnancy is diagnosed, *see American College of Obstetricians and Gynecologists, Statement of Policy: Further Ethical Considerations in Induced Abortion* 2-3 (Dec. 1977),¹⁰ the regulations require Title X health care providers to direct their counseling solely towards promoting childbirth. Health-related abortion restrictions that so "depart from accepted medical practice," *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. at 431 & 454 (O'Connor, J., dissenting), as these regulations do, unduly burden a woman's right to decide whether or not to continue a pregnancy.

By censoring information on abortion and compelling referral for prenatal care, section 59.8 of the regulations will lead many women to believe wrongly that abortion is not an available option. Some women, especially those who are uneducated or immigrants from countries where the right to

burgh, 476 U.S. at 762. The Court acknowledged that even standing alone the list of prenatal and neonatal care agencies could not pass constitutional muster:

Even the listing of agencies . . . presents serious problems: it contains names of agencies that well may be out of step with the needs of the particular woman and thus places the physician in an awkward position and infringes upon his or her professional responsibilities. Forcing the physician or counselor to present the materials and the list to the woman makes him or her in effect an agent of the State in treating the woman and places his or her imprimatur upon both the materials and the list. All this is, or comes close to being, state medicine imposed upon the woman, not the professional medical guidance she seeks, and it officially structures—as it obviously was intended to do—the dialogue between the woman and her physician.

Id. at 762-63 (citation omitted).

10 *See also American College of Obstetricians and Gynecologists, Standards for Obstetric-Gynecologic Services* 57 (6th ed. 1985) ("In the event of an unwanted pregnancy, the physician should counsel the patient about her options of continuing the pregnancy to term and keeping the infant, continuing the pregnancy to term and offering the infant for legal adoption, or aborting the pregnancy.") For a fuller discussion of the ethical issues raised, *see Briefs of Amici Curiae the American Public Health Association, et al.* and the *American College of Obstetricians and Gynecologists, et al.*

abortion is restricted, may be prevented from discovering that abortion is legal in the United States.¹¹ Out of fear of incurring their doctor's disapproval or exposing themselves to prosecution, many women will be reluctant to break the silence on abortion and ask about it. The regulations deprive these women of the opportunity to decide whether or not to continue a pregnancy, for they will not even realize they have a choice to make.

Those women who know abortion is an option and ask about its availability must be told only that "the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion." 42 C.F.R. § 59.8(b)(5) (1989). Many women will understand this message to mean that they have no safe alternative to carrying their pregnancy to term and that abortion is not appropriate for them. Declaration of Dr. Irving Rust, Medical Director of the Bronx Center of Planned Parenthood, New York City, ¶ 15 (254JA).¹² If information on the health of their "unborn child" is the only guidance women receive, they may well feel compelled to carry to term, or to turn to dangerous attempts to self-abort or even to suicide.¹³ Teenage girls, who are often scared, ashamed and alone when faced with pregnancy, are particularly susceptible to suggestion from their physicians that abortion is not permissible or available. Declaration of Toni Morgan, ¶¶ 7-8 (219-220JA).

Even the women who resist the government's censorship attempts, identify abortion as a safe and legal option, and

11 See generally C. Tietze & S. Henshaw, *Induced Abortion: A World Review* (6th ed. 1986). In fact, ignorance regarding the availability of abortion is pervasive throughout American society. See National Abortion Rights Action League, Hickman-Maslin Research Poll for American Viewpoint 4 (1987) (36% of American adults believe that abortion is available during the first three months of pregnancy only under "extreme circumstances" or is "not allowed").

12 Even if women are unsure of the meaning of this message, few will ask their doctors for fuller explanation because all patients are conditioned to "follow doctors' orders" unquestioningly. See Katz, *Physician-Patient Encounters "On a Darkling Plain,"* 9 W. New Eng. L. Rev. 207, 215 (1987).

13 Declaration of Dr. Irving Rust ¶¶ 11 (252JA), 14-16 (253-54JA).

choose to obtain abortions are harmed by the increased health risks and costs caused by the delay the regulations impose on their process of obtaining appropriate health care. See *Massachusetts v. Secretary of Health & Human Services*, 899 F.2d 53, 69-70 (1st Cir. 1990) (en banc). Under the regulations, women who enter Title X facilities with false, but not unreasonable, expectations of balanced counseling will be referred only to prenatal clinics—even if they express their desire to terminate their pregnancy. Though there may be some abortion providers on the list of prenatal care providers given them, women will not be able to identify the abortion providers except by a series of telephone calls or hit or miss visits to several facilities. This is particularly onerous for low income women who often lack access to a car, the fare for other transportation or even a telephone.¹⁴ Combined with scheduling difficulties, work and child care commitments, school and transportation problems, this circuitous path to abortion may entail delays of days, weeks or even months. Such delays may well push women into the second trimester of pregnancy, significantly increasing the health risks for those women who choose abortions.¹⁵ For the thousands of teenagers whose denial, fear, shame and uncertainty often result in a late initial visit to a clinic,¹⁶ further delay resulting from the regulations can be critical.

14 See Nsiah-Jefferson, "Reproductive Laws, Women of Color and Low-Income Women," in *Reproductive Laws for the 1990s* 24 (N. Taub & S. Cohen eds. 1988).

15 The Court recently noted that an abortion delay of 48 hours to a week or more "increased the medical risk associated with the abortion procedure to 'a statistically significant degree.'" *Hodgson v. Minnesota*, 58 U.S.L.W. 4957, 4963 (U.S. June 25, 1990) (accepting the finding of the District Court). With each passing week in the second trimester, the risks of major complications from even a legal abortion increases by approximately 30 percent and the mortality risk by 50 percent. Declaration of Dr. George Morley ¶ 12, President of the American College of Obstetricians and Gynecologists, (227JA).

16 See *Hodgson v. Minnesota*, 58 U.S.L.W. at 4970 (Marshall, J., concurring in part and dissenting in part) (citing 1 National Research Council, *Risking the Future: Adolescent Sexuality, Pregnancy and Childbearing* 114 (C. Hayes, ed. 1987)).

In addition to increasing health risks, delay makes abortion more costly¹⁷ and difficult to obtain.¹⁸ This is especially true for low income women living in rural areas where abortion providers are scarce and women often have to travel to another county or even another state to obtain an abortion.¹⁹ Because most of the women served by Title X do not have access to alternative health care,²⁰ many will learn of afford-

17 The cost of an abortion increases as pregnancy advances. Clinics charge an average of \$231 for an abortion at 8 weeks, \$400 at 16 weeks and \$700 at 20 weeks. The Alan Guttmacher Institute, *Abortion and Women's Health: A Turning Point for America?* 26 (1990). The Court invalidated the second trimester hospitalization requirement in *Akron* because it imposed "a heavy, and unnecessary, burden," more than doubling the cost of "women's access to a relatively inexpensive, otherwise accessible, and safe abortion procedure." 462 U.S. at 438.

18 Only 17% of all abortion providers perform abortions after the 16th week of pregnancy. Henshaw, Forrest, & Van Voort, *Abortion Services in the United States, 1984 and 1985*, 19 Fam. Plan. Persp. 63, 69 (1987).

19 In 1985, 82% of all U.S. counties lacked an abortion provider, yet these counties were home to 30% of all women of childbearing years. See Henshaw, Forrest, & Van Voort, *supra* n.18, at 65. The difficulty in locating an abortion provider is increasing as fewer doctors are willing to perform abortions for fear of harassment. N.Y. Times, Jan. 8, 1990, at A1, col. 1. South Dakota and North Dakota now only have one abortion provider each and in Wyoming, more than 50% of women go out of state to obtain an abortion. N.Y. Times, June 28, 1990, at A10, col. 5.

20 Even HHS has acknowledged that "[f]or many clients, family planning clinics are their *only* continuing source of health information and medical care." U. S. Dep't of Health and Human Services, *Program Guidelines for Project Grants for Family Planning Services* § 9.4 (1981) (emphasis added). Few women served by Title X have any health insurance which would enable them to afford private care. Of all women aged 18-24, almost 30% have no insurance coverage. Tallon & Block, "Changing Patterns of Health Insurance Coverage; Special Concerns for Women," in *Women, Health and Poverty* 119, 122 (C. Perales & L. Young eds. 1988). Of all women aged 15-44 living below the poverty level, 36% are uninsured. *Id.* The rates are worse for women of color: 21.8% of Blacks and 29.1% of Hispanics are uninsured, compared with 14% of whites. Nsiah-Jefferson, "Reproductive Laws, Women of Color, and Low-Income Women," in *Reproductive Laws for the 1990s* 17, 27 n.46 (N. Taub & S. Cohen eds. 1988). Moreover, "uninsured minorities obtain less physician care and less hospital care, and travel further and wait longer for care, than white uninsured." Dallek, *Health Care for America's Poor: Separate and Unequal*, 20 Clearinghouse Rev. 361, 370 (1986).

able abortion clinics only through word of mouth. In their desperate and frustrated quest to end an unwanted pregnancy, some women will find and turn to illegal abortionists.²¹ For these women, delay may spell death.²²

The regulations will have perhaps their cruelest effect on those low income women who have serious complicating conditions, such as hypertension, eclampsia, diabetes, congenital heart disease, cancer, sickle-cell anemia, kidney disease and certain respiratory, urinary and neuromuscular disorders. Continuation of pregnancy for women suffering from these diseases carries grave risks for the health of both the mother and the fetus.²³ While the regulations at issue will permit professionals in Title X clinics to disclose the existence of complicating conditions to their patients, they will prevent counseling of abortion as an alternative to carrying a pregnancy to term.²⁴ As a result, women with serious complicat-

21 Recently, Becky Bell, an Indiana high school student, died of a massive infection after she sought an illegal abortion to avoid disappointing her parents by telling them she was pregnant. Carlson, *Abortion's Hardest Cases*, Time, July 9, 1990, at 22.

22 See *Hodgson v. Minnesota*, 58 U.S.L.W. 4957, 4970 (U.S. June 25, 1990) (Marshall, J., concurring in part and dissenting in part) (citing Greydanus & Railsback, *Abortion in Adolescence*, 1 Seminars in Adolescent Med. 213, 214 (1985) (mortality rate 100 times greater from illegal abortion than legal one)).

23 For example, diabetes poses serious risks during pregnancy. Pregnancy-induced diabetes occurs in approximately one to three percent of pregnancies. *Medical Complications During Pregnancy* 41 (G. Burrow & T. Ferris 3d ed. 1988). In addition, approximately 1.5 million women of childbearing age are known to have diabetes. *Maternal-Fetal Medicine* 925 (R. Creasey & R. Resnik 2d ed. 1989). A pregnant woman with diabetes is four times as likely to develop hypertensive disease; she is also more likely to develop infections of a greater severity, injure her birth canal during vaginal delivery, require a caesarian section, and hemorrhage after delivery. *Williams Obstetrics* 600 (J. Pritchard, P. MacDonald & N. Grant 17th ed. 1985). See Brief of *Amici Curiae* the American College of Obstetricians and Gynecologists, *et al.* for a full discussion of the health risks of pregnancy to women with complicating medical conditions.

24 See Declaration of Dr. George Morley, President of the American College of Obstetricians and Gynecologists ¶ 17 (228-29JA); Declaration of Prof. Howard Minkoff, Professor of Obstetrics and Gynecology, State of

ing conditions will not learn that their pregnancies pose substantial health risks that may require an abortion to preserve their health or save their life. In addition, the regulations' mandated referral to prenatal care will reinforce the false impression that the pregnancy does not actually threaten their health.

As a result of the Title X regulations' enforced misinformation, low income women who have restricted access to affordable, comprehensive reproductive health care and counseling will be impermissibly coerced to make uninformed, and often dangerous, reproductive decisions. For this reason, the Title X regulations do more than encourage childbirth over abortion: they actively interfere with a woman's ability to decide whether to carry a pregnancy to term.

II. THE REGULATIONS VIOLATE THE FIRST AMENDMENT RIGHTS OF LOW INCOME WOMEN TO RECEIVE INFORMATION FROM HEALTH CARE PROVIDERS PRACTICING AT TITLE X CLINICS.

The regulations hold the first amendment rights of women and their health care providers hostage to a funding scheme requiring the dissemination of inaccurate and distorted information. Through these funding restrictions, the government has impaired the first amendment right of women to receive information about their reproductive health.

It is now well established that the first amendment protects the listener's right to receive information. *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-57 (1975); *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). As early as its decision in *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Court clarified that, in addition to protecting the freedom to speak, the Constitution safeguards "opportunities . . . to acquire knowledge." *Id.* at 482. In keeping with this principle, the Court has struck down a wide

New York Health Science Center ¶ 8 (648A); Declaration of Dr. Allan Rosenfield, Professor of Obstetrics-Gynecology and Public Health, Columbia University School of Public Health ¶ 22 (83a).

variety of government restrictions that offended the "(f)irst amendment right to receive information and ideas." *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)). See, e.g., *Globe News- paper Co. v. Superior Court*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Procurier v. Martinez*, 416 U.S. 396, 408-09 (1974); *Lamont v. Post- master General*, 381 U.S. 301, 306-07 (1957); *Thomas v. Collins*, 323 U.S. 516, 534 (1945).²⁵ The reciprocal nature of the right to receive information derives from the fact that it "is a necessary predicate to the recipient's meaningful exercise of his own right of speech, press and political freedom." *Board of Education v. Pico*, 457 U.S. 853, 867 (1982) (plurality opinion) (emphasis in original).²⁶

In this instance, the right to receive information is a necessary predicate to the constitutionally protected right to reproductive decisionmaking. As the Court declared in *Griswold*, the very first case recognizing the protected nature of the relationship between a patient seeking family planning information and her physician, "[t]he right of freedom of speech and press includes not only the right to utter or print, but the . . . right to receive . . . [information]." 381 U.S. at 482.²⁷

25 In these cases, the Court has held unconstitutional government attempts to stem the flow of information in public schools, courts of law, prisons and the mails. The regulations' efforts to suppress vital medical communications in Title X clinics are surely more reprehensible, given that this "blackout" not only curtails the sharing of ideas and information critical to our polity but also directly undermines the health and lives of millions of women.

26 Justice Brennan stated that the listener's right to receive information warrants first amendment protection because "the dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers." *Lamont*, 381 U.S. at 308 (Brennan, J., concurring).

27 Justice White has written that "[t]he self-expression of the communicator is not the only value encompassed by the First Amendment. One of its functions, often referred to as the right to hear or receive information, is to protect the interchange of ideas. Any communication of ideas . . . furthers the purposes of the first amendment." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 806, *reh'g denied*, 438 U.S. 907 (1978) (White, J., dissenting).

Despite the fact that the first amendment "prohibit(s) [the] government from limiting the stock of information from which members of the public may draw," *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, *reh'g denied*, 438 U.S. 907 (1978),²⁸ the regulations withdraw abortion counseling and referrals in the context of low income health care from the stock of information that millions of women can receive and cast prenatal care and childbirth as the only option.²⁹ Therefore, the Second Circuit's conclusion that the regulations were not viewpoint-based, because they limited both "pro and con" advocacy about abortion, *New York v. Sullivan*, 889 F.2d 401, 414 (2d Cir. 1989), ignored the regulations' obvious intent actively to interfere with a woman's decision whether or not to carry her pregnancy to term. As the First Circuit correctly observed,

It is naive to assert that not talking about abortion to a pregnant woman when discussing her options is value neutral. . . . By discussing only what is best for the unborn child, the counselor has already made the woman's choice. The Government, in restricting the counselor's options to that choice, enforces its choice.

Massachusetts v. Secretary of Health and Human Services, 899 F.2d 53, 72 (1st Cir. 1990) (en banc).³⁰ By prohibiting a woman from receiving abortion-related information, the regulations violate the Court's admonition, in another first amendment context, that "[i]f there be time to expose through discussion the falsehood and fallacies . . . the remedy to be applied is more speech, not enforced silence." *Linmark Assoc. v. Willingboro*, 431 U.S. 85, 97 (1977) (quoting *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring)).

28 See also *Griswold*, 381 U.S. at 482 (the government "may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge").

29 Note, *The Title X Family Planning Gag Rule: Can the Government Buy Up Constitutional Rights?* 41 Stan. L. Rev. 401, 402 (1989).

30 For a fuller discussion of the regulations' unconstitutional discrimination on the basis of viewpoint in a public forum, see Brief of *Amici Curiae* the Commonwealth of Massachusetts, *et al.*

Protecting the dissemination of full and accurate medical information from governmental interference is vital. Such information is critical and is already of limited supply, especially to low income women.³¹ The pervasive nature of government regulation of medicine, designed to protect the public through ensuring the quality of medical counseling, demonstrates the crucial importance of complete and accurate medical information to our society.³² All states require that a license be obtained before a doctor can practice medicine, and licensing is contingent upon completion of extensive education and training.³³ In addition, many doctors choose to develop specializations which restrict the availability of specific medical information even further, to a limited few in a given field.³⁴ While such efforts are intended to improve the

31 Numerous studies and reports have noted increasing deterioration in access to health care services for low income groups. See, e.g., L.A. Times, July 17, 1990, at A1, col. 5 (noting that the United States infant mortality rate—a prime indicator of the nation's health care access—exceeds 10 per 1,000, placing the United States no better than 20th out of 22 industrial nations in a United Nations survey); Hatlie, *Professional Liability: The Case for Federal Reform*, 263 J. Am. Med. A. 586 (1990) (reporting increased diminution in the availability of health care in the United States and noting that "access problems are most pronounced in the maternal health field").

32 Public health and the practice of medicine are highly regulated by both the state and federal government, including the licensing of health care providers, facility construction, antitrust matters, environmental protection and the development and distribution of drugs. See generally *Health Care Sourcebook, A Compendium of Federal Laws, Regulations and Documents Relating to Health Law*, vols. 1 & 2 (W. Miller ed. 1989).

33 G. Annas, *The Rights of Patients* 252 (2d ed. 1989). Typically, a doctor is required to complete four years of undergraduate education, four years of medical school and four years of clinical education as a resident.

34 If a doctor chooses to specialize in a particular area of medicine, two or more years of additional training are necessary, and certification by a specialty board is required by most institutions. AMA Council on Medical Education, *Future Directions for Medical Education*, 248 J. Am. Med. A. 3225 (1982). See also AMA Council on Long Range Planning and Development, *The Future of General Internal Medicine*, 262 J. Am. Med. A. 2119 (1989) (number of primary health care specialists declining rapidly as more doctors are choosing specialization over becoming a general internist, because of higher pay and status).

quality of medical counseling, they also impose costs that necessarily restrict its availability.³⁵

Over the past twenty years, the federal government has encouraged low income women and the health facilities in their communities to rely on Title X to support affordable, quality reproductive health care, including abortion counseling and referral. To a large extent, Title X funding has displaced state and local government aid and private funding.³⁶ Thus, by preventing Title X health care workers from providing their patients with comprehensive and accurate health information about the option of abortion—despite its importance and limited availability—the government effectively places it beyond the reach of most, if not all, Title X patients. For Title X patients, medical advice about the “denied idea” of the option of abortion is not “readily available from the same source in other accessible locations,” *Board of Education v. Pico*, 457 U.S. 853, 913 (1982) (Rehnquist, J., dissenting), and will be effectively foreclosed by the federal government.

Enhanced and improved medical information through government regulation is not the only factor defining the health care culture in the United States. The governing principles of medical ethics nationwide require that physicians communicate to the patient full information about her medical condition and treatment alternatives to ensure that the patient

35 The government's control over the practice of medicine also extends to the criminalization of the unauthorized practice of medicine. See, e.g., *Pinkus v. MacMahon*, 129 N.J. 367, 29 A.2d 885 (N.J. Sup. Ct. 1943) (owner of a food store engaged in unauthorized practice of medicine when he diagnosed shoppers' illnesses, prescribed a healthful diet and sold certain vitamins which he claimed had a curative effect); *New York v. Varas*, 110 A.D.2d 646, 487 N.Y.S.2d 577 (2d Dept. 1985) (engaged in unauthorized practice of medicine where the defendant never obtained a license to practice and conducted medical examinations, wrote prescriptions and provided diagnoses).

36 Approximately fifty percent of Title X projects' funding comes from federal sources, with the remainder generated by Medicaid and sliding scale fee payments. See *Massachusetts v. Secretary of Health and Human Services*, 899 F.2d 53, 55-56 (1st Cir. 1990) (en banc).

participates meaningfully in her treatment decisions.³⁷ This is premised on the view that such an approach results in the best medical decisions.

It is unreasonable, in the context of this medical culture, to expect a woman who uses a Title X clinic to anticipate the forfeiture of full health care counseling and her own informed decisionmaking when she walks through the Title X clinic doors. Indeed, one of the many apparent dangers of the regulations is that women entering Title X clinics are not warned that they are about to receive distorted, misleading information unrelated to their individual health needs. Moreover, even if formal warning notices were somehow provided to Title X patients, it would be unreasonable to expect that a Title X patient, or any patient, would meaningfully alter her expectation of the physician-patient relationship to accommodate any disclaimer stating that the clinic cannot mention abortion.³⁸

The dangers of the government's censorship campaign become readily apparent when one hypothesizes a situation where the government enacts a regulation prohibiting oncolo-

37 See, e.g., American Medical Association, *Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association* ¶ 8.07, at 31-32 (1989); *Canterbury v. Spence*, 464 F.2d 772, 780 (D.C. Cir.), cert. denied, 409 U.S. 1064 (1972).

38 The element of trust and full reliance is crucial within the context of a physician-patient relationship. “The average patient has little or no understanding of the medical arts, and ordinarily has only [her] physician to whom [she] can look for enlightenment with which to reach an intelligent decision.” *Canterbury v. Spence*, 464 F.2d 772, 780, cert. denied, 409 U.S. 1064 (1972) (D.C. Cir. 1972). Thus a patient relies on her doctor for the accurate, complete and unbiased information she needs to make decisions about her health. See *Affidavit of Dr. Jay Katz, Professor of Law and Psychoanalysis, Yale University* ¶¶ 7-8 (207JA):

The doctor-patient relationship is based on trust . . . it is recognized by law as a fiduciary relationship. Because patients must be able to rely on their physicians to act in good faith and in their best interest, principles of law and ethics require them to do so.

The physician thus has an obligation to be truthful, to respect the rights of the patient, and to disclose to the patient all pertinent facts regarding the patient's condition and treatment options, including the risks and benefits of each.

gists in federally funded hospitals from counseling cancer patients about the treatment option of chemotherapy, while mandating referrals to facilities which primarily practice holistic medicine. Patients suffering from cancer would either be left unaware of the existence of chemotherapy, or be given the misleading message that chemotherapy was not a medically acceptable treatment option for many forms of cancer—in either case they would be unable to make a fully informed treatment decision.

Thus, the government's censorship of abortion information infringes the most basic first amendment rights of patients of Title X facilities and ignores the Court's admonition that "people will perceive their own best interests only if they are well informed . . . the best means to that end is to open the channels of communication rather than to close them." *Virginia Board of Pharmacy v. Virginia Consumer Council, Inc.*, 425 U.S. 748, 770 (1975).

III. THE REGULATIONS DEPRIVE WOMEN OF EQUAL PROTECTION UNDER THE LAW BECAUSE THEY DISCRIMINATE ON THE BASIS OF GENDER AND UNDULY BURDEN A WOMAN'S FUNDAMENTAL RIGHTS.

The regulations contravene the fourteenth amendment's prohibition on discrimination because they exclusively harm women. As a result of the regulations, women are denied important medical information necessary to make an informed decision about contraception or, if pregnant, about whether to continue a pregnancy. For example, a woman suffering from severe hypertension should be advised by her Title X physician both that the use of oral contraceptives is contraindicated and that pregnancy may threaten her life. In these circumstances, the regulations prevent full disclosure of crucial information to a woman who for health reasons, should consider alternative forms of contraception. See 42 C.F.R. § 59.8(a)(4). The Title X physician would be precluded from fully informing her patient that barrier methods

of contraception, with early abortion as a backup if the barrier method fails, are the safest type of contraception.³⁹

Women, pregnant and non-pregnant, are the only people directly burdened by the Title X regulations.⁴⁰ Moreover, this gender-based burden curtails women's fundamental constitutional rights: a woman's fundamental privacy right to terminate a pregnancy and her first amendment right to receive information.⁴¹

The Court has held that measures classifying on the basis of gender are unconstitutional unless the party supporting the measure can "carry the burden of showing an 'exceedingly

39 See Tietze, Bongaarts & Schearer, *Mortality Associated with the Control of Fertility*, 8 Fam. Plan. Persp. 6 (1976); The Alan Guttmacher Institute, *Making Choices—Evaluating the Health Risks and Benefits of Birth Control Methods* (1983). The Food and Drug Administration requires manufacturers of intrauterine devices ("I.U.D.'s") to inform physicians that if a woman becomes pregnant with an I.U.D. in place, and removal is difficult, "termination of the pregnancy should be considered and offered the patient as an option . . ." 21 C.F.R. § 310.502(b)(1) (1989). Similarly, a woman who becomes pregnant while using oral contraceptives "should be apprised of the potential risks to the fetus: the advisability of continuing the pregnancy in light of these risks should be discussed." K. Fineberg, J. Peters, J. Willson & D. Kroll, *Obstetrics/Gynecology and the Law* 311 (1984).

40 Because this case involves placing affirmative burdens on all women's constitutional rights, *Geduldig v. Aiello*, 417 U.S. 484 (1974), is not controlling. *Geduldig* sustained the constitutionality of a state disability insurance program that excluded from coverage certain disabilities resulting from pregnancy because the group discriminated against included only pregnant women and not all women.

The program upheld in *Geduldig* is also distinguishable from the regulations at issue because it refused to extend to women a benefit that men could not receive. The Court has established a distinction between "merely refusing to extend to women a benefit that men cannot and do not receive," and "imposing on women a substantial burden that men need not suffer." *Nashville Gas Co. v. Satty*, 434 U.S. 136, 142 (1977) (deeming exclusion of pregnant employees sex discrimination under Title VII). Thus, even where a law places affirmative burdens on pregnant women alone, *Geduldig* has no force. See also Estrich and Sullivan, *Abortion Politics: Writing for an Audience of One*, 138 U. Penn. L. Rev. 119, 124 n.10 (1989).

41 Since the regulations discriminate against women in a way that infringes upon their fundamental rights, the regulations violate the equal protection clause and must be subjected to strict scrutiny. See *infra* at p. 25 and note 49.

'persuasive justification' for the classification.'" *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982) (quoting *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981)). *See also Craig v. Boren*, 429 U.S. 190, 197-199 (1976). Classifications based on gender have long been subjected to searching analysis because of the substantial burdens suffered by women when gender stereotypes are imposed on them. *See Mississippi University for Women*, 458 U.S. at 726; *Califano v. Goldfarb*, 430 U.S. 199, 211 (1977) (plurality opinion); *Stanton v. Stanton*, 421 U.S. 7, 14 (1975); *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality opinion). The Title X regulations impair a woman's constitutionally guaranteed liberty and autonomy by the pernicious strategy of keeping all necessary information from her. This strategy of misinformation, justified by the goal of "promoting childbirth,"⁴² perpetuates the outmoded and dangerous notion that a woman's proper function is reproduction.⁴³ The Court has consistently struck down legislation that perpetuates "fixed notions concerning the roles and abilities of males and females," *Mississippi University for Women*, 458 U.S. at 726, even when their impact has been far less onerous than the effects of these regulations.⁴⁴

42 If the regulations are allowed to stand, a day may come when the government decides to impose burdens on men as well in the interest of "promoting childbirth." For example, the government may decide to mislead men, or withhold information altogether, about contraception so that a sexually active man might father more children.

43 Women have long been perceived as persons whose "paramount destiny and mission . . . [is] to fulfill the noble and benign office of wife and mother." *Bradwell v. Illinois*, 16 Wall. 130, 142 (1873) (Bradwell, J., concurring). People who would restrict women's access to abortion echo the views of Justice Bradley and believe that the only appropriate roles for women are those of mother and housewife. *See* Estrich & Sullivan, *supra* note 40, at 152-53.

44 The Court has struck down: sex-based distinctions determining eligibility for survivors benefits under the Social Security Act, *Califano v. Goldfarb*, 430 U.S. 199 (1977); sex-based admission requirements for enrollments in nursing school, *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982); sex-based regulations determining quarters and medical

Not only do the regulations impermissibly perpetuate stereotypes about a woman's proper role in society, they also deprive women of equal treatment with respect to the exercise of their fundamental right to privacy. All persons possess a right to privacy protecting certain personal decisions regarding marriage and family life from unwarranted governmental interference.⁴⁵ For a woman, this right includes the right to decide whether or not to terminate a pregnancy, with the chance to determine what is best for her given her physical,⁴⁶ emotional, economic, educational and family circumstances. In fact, the Court has recognized a woman's right to choose an abortion by striking down a regulation that would have required spousal consent because "it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy" *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 71 (1976).

allowances, *Frontiero v. Richardson*, 411 U.S. 677 (1973); sex-based regulations establishing different drinking ages for men and women, *Craig v. Boren*, 429 U.S. 190 (1976); and sex-based regulations determining government benefits, *Weinberger v. Weisenfeld*, 420 U.S. 636 (1975). None of these regulations actually interfered with a woman's constitutional rights much less jeopardized her health or life.

45 The freedom of personal choice implicit in the concept of constitutional liberty places beyond the intrusive reach of the government the decision to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); the decision of when and whether to bear children, *see Griswold v. Connecticut*, 381 U.S. 479 (1965); and decisions regarding childrearing and education, *see Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). The freedom to choose the structure of one's family is "deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977).

46 Over the nine months of pregnancy, a woman's uterus increases 500 to 1,000 times in size, displacing other bodily organs including the heart, appendix and gastrointestinal tract; her resting pulse rate quickens by ten to fifteen beats per minute and her heart may increase slightly in size; and her body weight increases by an average of twenty-five pounds. Even a healthy pregnant woman may experience nausea, vomiting, more frequent urination, back pain, fatigue, insomnia, labored breathing and water retention. *See Williams Obstetrics* 540-42 (J. Pritchard, P. MacDonald & N. Grant 17th ed. 1985).

No regulation in the Title X context infringes on men's privacy rights in a way that is comparable to the regulations' ban on the provision of any information about abortion to women.⁴⁷ Similarly, men face no obstacles to their first amendment right to receive medical information critical to decisions regarding their bodies or health. The regulations create two categories of doctor-patient relationships, one which presumptively allows men to receive full medical information and the other which deprives only women from obtaining complete and accurate information about their health.⁴⁸ This type of governmental discrimination clearly violates the equal protection clause.

IV. THE TITLE X REGULATIONS AT ISSUE HERE CANNOT SURVIVE STRICT SCRUTINY BECAUSE THE GOVERNMENT LACKS A COMPELLING INTEREST AND THE REGULATIONS ARE NOT NARROWLY TAILORED TO SERVE ANY INTEREST.

The Title X regulations directly interfere with fundamental privacy and first amendment rights of women. Moreover, because the regulations exclusively harm women by burdening their fundamental rights, they also deprive women of equal protection under the law. The Title X regulations cannot survive strict scrutiny because the government can assert no "compelling interest" to justify the burdens placed on women.

47 Recipients of Title X funds provide family planning services to both men and women. Services for men include sterilization, sexually transmitted disease screening and treatment, condom distribution and general information. See Danielson & McNally, *Title X and Family Planning Services for Men*, 20 Fam. Plan. Persp. 234 (1988).

48 This is not a case of disproportionate impact but of exclusive impact because women are the only ones who are affected by the Title X regulations. In *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979), by contrast, the veterans' preference upheld by the Court disadvantaged a class comprised of both men and women although the classification disproportionately disadvantaged women. The class affected by the regulations at issue is defined by a biological correlate of gender unlike *Feeney* where the class granted veterans' benefits also consisted of women.

en's privacy and first amendment rights by the regulations, or their denial of equal protection.

In order to safeguard the individual against the invasive power of government, the Court turns its most "searching judicial inquiry" to governmental regulation that intrudes on the fundamental rights of its citizens. *City of Richmond v. J.A. Croson Co.*, 109 S. Ct. 706, 721 (1989). Thus, the Court has consistently applied strict scrutiny whenever a woman's privacy right to choose abortion is encumbered by substantial burdens. See *Hodgson v. Minnesota*, 58 U.S.L.W. 4957, 4969 (U.S. June 25, 1990) (Marshall, J., concurring); *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986); *City of Akron v. Akron Center for Reproductive Health Inc.*, 462 U.S. 416 (1983); *Roe v. Wade*, 410 U.S. 113 (1973). The Court has also consistently applied strict scrutiny whenever the government intrudes on the first amendment right to receive information. *Griswold v. Connecticut*, 381 U.S. at 482.⁴⁹ In addition, strict scrutiny applies whenever legislation places burdens on a fundamental right in violation of the equal protection clause. *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

The central purpose of this "searching judicial inquiry," *Croson*, 109 S. Ct. at 721, into governmental actions that infringe upon constitutionally protected rights and groups is to ensure that such actions serve a stated goal or interest of sufficient importance to justify infringement and that the means chosen to effect the goal are closely tailored to serve only the state interest with minimum intrusion upon the individual's protected rights. The regulations at issue here fail in both respects.

First, the overriding governmental purpose for Title X is to promote public health through the provision of family plan-

49 Similarly the Court applies strict scrutiny to other violations of free speech, including discrimination on the basis of viewpoint, *FCC v. League of Women Voters*, 468 U.S. 364, 383-84 (1984), and conditioning federal funding on the relinquishment of first amendment rights to free expression, *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963).

ning services for low-income clients⁵⁰—a compelling interest. The regulations at issue here also serve the ancillary purpose of encouraging childbirth over abortion. The government seeks to achieve this ancillary goal, however, not simply by providing incentives to childbirth but rather by perpetuating ignorance and denying women information about abortion as a safe, legal alternative to childbirth. In effect, the regulations' purported purpose of promoting childbirth is a pretext for the actual purpose of the regulations⁵¹—direct interfer-

50 In enacting Title X, Congress intended to establish a program that would provide the poor with comprehensive reproductive health care. During the floor debate in the House, then-Representative George Bush stated, "[m]ost important is that this legislation be recognized . . . as a health care service mechanism . . ." 116 Cong. Rec. H37370 (daily ed. Nov. 16, 1970) (statement of Rep. Bush). The statutory mandate of Title X is expansive:

to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).

42 U.S.C. § 300(a) (1982). For a complete discussion of the purpose of Title X, see Brief of Petitioner State of New York, *et al.* and Brief of *Amici Curiae* NAACP Legal Defense and Educational Fund, Inc., *et al.*

51 At least one member of the Court has advocated searching scrutiny of the government's stated purposes as well as the means to achieve those purposes. In *Mississippi University For Women v. Hogan*, Justice O'Connor emphasized that "the mere recitation of a benign . . . purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme." 458 U.S. 718, 728 (1982) (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 (1975)).

Similarly, in a first amendment context, Justice O'Connor also suggested that strict scrutiny applies whenever burdens on speech are imposed on the pretext of furthering some general legislative interest: "[i]f . . . a city were to use a nuisance statute as a pretext for closing down a bookstore because it sold indecent books . . . the case would clearly implicate first amendment concerns and require analysis under the appropriate first amendment standard of review." *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 708 (1986) (O'Connor, J., concurring).

Justice O'Connor recently observed that the requirement of narrowly tailored regulation is "designed to 'ensur[e] that the means chosen fit' [the] compelling goal so closely that there is little or no possibility that the motive" for a regulatory scheme is illegitimate or unconstitutional. *Metro Broadcasting, Inc. v. FCC*, 58 U.S.L.W. 5053, 5072 (U.S. June 27, 1990) (O'Connor, J., dissenting) (quoting *Crasen*, 109 S. Ct. at 493).

ence in the fundamental privacy and first amendment rights of women to make fully informed decisions between abortion and childbirth.⁵²

Second, the government's means of banning abortion counseling and mandating referral to prenatal care are not narrowly tailored to serve the goal of encouraging childbirth without impermissibly violating the free speech and privacy rights of women served by Title X programs. The regulations clearly conflict with medical ethics that demand unrestricted communication between a physician and her patient.⁵³ The government's asserted interest here does not justify the enactment of health regulations that "depart from accepted medical practice," *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. at 431 & 454 (O'Connor, J., dissenting). Rather than being narrowly tailored to encourage childbirth over abortion, the regulations distort the physician-patient dialogue in a way that fundamentally impedes the patient's receipt of viewpoint neutral information and her autonomy in reproductive decisionmaking.

Finally, the Title X regulations also fail to pass muster under the Court's most lenient standard of review, the rational basis standard. As the Court recently reiterated in *Hodgson*, under any analysis, an abortion regulation "cannot be sustained if the obstacles it imposes are not reasonably related to legitimate state interests." *Hodgson v. Minnesota*, 58 U.S.L.W. at 4962 (citations omitted). Because the effect of the regulations' ban on abortion counseling and referral is seriously to endanger maternal health, the regulations' goal of promoting childbirth actually undercuts Title X's overarching public health purpose in a manner that violates medically accepted practice. Any regulation which so clearly

52 As the Court pointed out in *Hodgson*, "[a] State's value judgment favoring childbirth over abortion may provide adequate support for decisions involving [the] allocation of public funds, but not for simply substituting a state decision for an individual decision that a woman has a right to make for herself. Otherwise the interest in liberty protected by the due process clause would be a nullity." *Hodgson v. Minnesota*, 58 U.S.L.W. 4957, 4962 (U.S. June 25, 1990).

53 For a complete discussion of this point, see Brief of *Amici Curiae* the American College of Obstetricians and Gynecologists, *et al.*

departs from commonly accepted medical ethics and practice cannot be rationally related to a legitimate state interest in promoting health and cannot be saved simply because it serves some ancillary purpose.

By analogy, suppose perceiving a serious threat of over-population, the government opted to respond to the crisis by limiting population growth through a program of male sterilization. A federal program of forced sterilization of men would violate a man's right to decide whether or not to have children, and would necessarily be struck down by the Court on privacy and equal protection grounds. *Cf. Griswold v. Connecticut*, 381 U.S. 479 (1965); *Skinner v. Oklahoma*, 316 U.S. 535 (1942). However, a government program providing federal funding of the full cost of male sterilizations (but not funding male fertility treatment) and establishing population control clinics for the performance of sterilization on demand would be a possible alternative under prevailing constitutional doctrine. *Cf. Maher v. Roe*, 432 U.S. 464 (1977); *Harris v. McRae*, 448 U.S. 297 (1980). Hypothesize further that an illness breaks out which causes sterility in men only, but can be cured if diagnosed and treated promptly. To further promote population control, the government enacts regulations which prohibit health care professionals in federally funded facilities from counseling men with the illness about its treatment. In this hypothetical, the legitimate goal of promoting population control is pursued by a means which violates an individual's fundamental rights and is a pretext for the unconstitutional purpose of denying men their right to choose whether or not to have children.

CONCLUSION

Amici respectfully urge that the regulations should be invalidated as an impermissible "effort to deter a woman from making a decision that, with her physician, is hers to make." *Massachusetts v. Secretary of Health and Human Services*, 899 F.2d 53, 66 (1st Cir. 1990) (en banc) (quoting *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 759 (1986)). For all the foregoing reasons, the Court should strike down the Title X regulations as unconstitutional.

Dated: July 27, 1990

Respectfully submitted,

Sarah E. Burns
Alison Wetherfield
NOW LEGAL DEFENSE AND
EDUCATION FUND
99 Hudson Street
12th Floor
New York, New York 10013

John H. Hall
Counsel of Record
Geoffrey H. Coll
Claudia A. Lewis
Randi J. Roberts
Mallika Dutt
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022
Attorneys for Amici Curiae

APPENDIX A

INTEREST OF *AMICI CURIAE* ORGANIZATIONS

ABORTION RIGHTS MOBILIZATION is an organization dedicated to implementing and guaranteeing women's right to legal abortion as decreed by the U.S. Supreme Court.

ActionAIDS, in Philadelphia, Pennsylvania, provides ongoing direct services to approximately 400 of the men, women and children with symptoms of HIV disease in the Greater Philadelphia area. Additionally, it provides support and assistance to their spouses, lovers, family members and care givers. Access to comprehensive reproductive health information—including information about abortion and abortion services—can be crucially important to women who have tested positive for the AIDS virus. These women need access to such equitable medical coverage in order to have a true moral choice with regard to one of the most heartbreak-
ing and difficult decisions—that of whether or not to bear a child who may be born with AIDS. Because women at high risk of AIDS frequently discover their own HIV-positive status as a result of giving birth to a child with AIDS, access to comprehensive reproductive health care, including abortion, becomes a matter of paramount importance. For medical, moral and emotional reasons, these women cannot reasonably be required to carry future inadvertent pregnancies to term. Low income and adolescent women, many of whom are people of color, are in particular need of access to the federally funded family clinics that provide comprehensive reproductive health information—including abortion services—as one of their services. Without such access, we can expect a marked increase in both unsafe, illegal abortions and AIDS infection in women and their children.

The **ALL-PEOPLES CONGRESS** (the "Congress"), based in New York City, is a national organization with chapters in communities in major cities whose women members are Black, Latina, Asian, Native American, White, students, lesbians, workers, unemployed, disabled seniors, single heads of households and those on fixed incomes. The Congress supports a comprehensive federal health care program of guaran-

teed reproductive rights, health care, and access to and information concerning safe, legal, affordable abortion. It opposes any restrictions in Title X facilities which would put any obstacles in the way of poor women or deny them information on abortion, birth control, or any other information necessary in order to make informed choices.

The **AMERICAN ASSOCIATION OF UNIVERSITY WOMEN** (the "AAUW"), a network of 135,000 college-educated women, promotes equity for women and girls, education and self-development over the life span and positive societal change. The AAUW supports the right of every woman and girl to safe and comprehensive reproductive health care. AAUW believes that decisions concerning reproductive health care are personal ones, and that the right to make informed decisions should be available to *all* women.

The **AMERICAN HUMANIST ASSOCIATION** (the "AHA") is a nationwide philosophical-lifestance-religious membership organization, founded in 1941. The AHA and its members support reproductive choice and believe that the HHS regulations forbidding the provision of information about abortion in Title X-funded programs can only have a negative effect on women's health and the integrity of counselors.

The **AMERICAN JEWISH COMMITTEE** ("AJC") is a national organization of 40,000 members, founded in 1906 for the purpose of protecting the civil and religious rights of Jews. The AJC believes that this goal can best be accomplished by helping to preserve the constitutional rights of all Americans, including the fundamental right of access to abortion on a voluntary basis.

AMERICANS FOR RELIGIOUS LIBERTY (the "ARL") is a nationwide educational public interest organization, founded in 1981, dedicated to defending religious liberty, reproductive freedom, and the constitutional principle of separation of church and state. ARL regards the restrictions on abortion counseling and referrals under Title X as violative of the counselor-client relationship, of the client's right to

know, of the free exercise of religion, of reproductive freedom, and of the constitutional ban of laws "respecting an establishment of religion."

The **ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND** (the "AALDEF"), founded in 1974, is a national civil rights organization that addresses the critical problems facing Asian Americans, including Asian women utilizing health clinics that are funded under Title X of the Public Health and Human Services Act. AALDEF seeks to improve the quality of life for Asian immigrant women, who constitute the largest sector of Asian women in the United States. AALDEF has assisted the formation of the Asian Women's Center located in New York City, which provides shelter with bilingual services for battered women. AALDEF is committed to defending a woman's right to reproductive choice.

The **ASSOCIATION FOR VOLUNTARY SURGICAL CONTRACEPTION** is a not-for-profit family planning membership organization dedicated to the principle that men and women everywhere should have access to safe and effective voluntary sterilization. The organization, which works in the United States and over 50 other countries, is funded by contributions from individuals, foundations, and by the United States government.

ASSOCIATION FOR WOMEN IN PSYCHOLOGY is a national organization founded in 1969 to promote the issues of women's mental health. The organization's position over the years has been that reproductive choice enhances women's mental health.

AWARE is a community-based, participatory research and educational organization conducting clinical, behavioral, and epidemiological research on women and HIV infection in the San Francisco Bay Area. AWARE findings have been published in scientific journals and have been presented at national and international medical, behavioral and public health meetings since 1985. Access to information about and services providing pregnancy termination services are essential

as unwanted pregnancies may accelerate the progression of HIV infection among women. The pain, suffering, and costs of delivering infants who may themselves be infected and may require extended hospitalization and treatment, until they too die from AIDS, is already a severe burden to health and social service systems in many states.

The BEVERLY HILLS BAR ASSOCIATION (the "BHBA") is a voluntary bar association formed on December 2, 1931 that currently has 3,000 members. The members of BHBA practice in and around the City of Beverly Hills, California. BHBA is committed to the protection of individual liberties and to the promotion of respect for the legal system. BHBA believes that a reversal of the landmark decision in *Roe v. Wade* would undermine public confidence in the legal system.

The BLACK WOMEN'S AGENDA, INC. is a private organization which aims to improve the status of Black women and their families and supports equal access to reproductive freedom.

The BRADFORD COUNTY COALITION FOR CHOICE (the "Coalition for Choice") is a citizen's organization committed to a woman's right to reproductive choice. The Coalition for Choice objects to the gag rule which we feel is unconstitutional.

The BROOKLYN WOMEN'S POLITICAL CAUCUS ("BWPC"), one of the local groups which together make up the National Women's Political Caucus, is a bi-partisan organization which has as its goal the election and appointment of progressive women to public office. In order to be eligible for our endorsement, candidates must agree to our four basic principles: choice for all women on whether or not to bear children, support of the Equal Rights Amendment, support of gay rights, and support of public funding for day care. Membership in the BWPC is open to all men and women who live in Brooklyn, work in Brooklyn, or have an interest in Brooklyn.

CALIFORNIA WOMEN LAWYERS (the "CWL") represent the interests of 23,000 women attorneys throughout the State of California. CWL is committed to preserving the fundamental constitutional right to choose and is very concerned by the recent erosions of such rights by the courts. It must be realized that every woman in this free country not only has the right to choose to have an abortion, but also has a safe place to get one.

In 1974, the CANADIAN ABORTION RIGHTS ACTION LEAGUE (the "CARAL")—then called the Canadian Association for Repeal of the Abortion Law—was formed to support Dr. Henry Morgentaler's challenge of the old abortion law. CARAL supported Dr. Morgentaler's battle politically and financially, and at the same time educated Canadians about the abortion issue so that his challenge to the law would be met by an informed and sympathetic public. CARAL supported clinics operating outside the strict confines of the law as necessary to open up access to abortion services. CARAL grew from a group of 100 people to become a national organization with 25 chapters, thousands of individual members and 100 member organizations. Until January 28, 1988 (when the Supreme Court of Canada declared the law unconstitutional) CARAL lobbied the government to repeal the abortion law. CARAL is now working to keep abortion out of the Criminal Code and to improve access to medically-insured abortion services across the country. Through education and information, CARAL seeks to convince Canadians and their elected representatives that Canada does not need a new abortion law. CARAL is the only national organization working full-time to keep abortion out of the Criminal Code and to protect access to abortion.

The CENTER FOR LAW & SOCIAL JUSTICE (the "CLSJ") at Medgar Evers College is a research and advocacy institution created in 1985 by a special appropriation of the New York State Legislature to establish a legally oriented civil rights and social justice institution in New York City. CLSJ conducts litigation and public policy projects on matters involving pressing civil and human rights issues, in such

areas as employment, health care, and housing. Discrimination in these areas has historically plagued the African-American communities CLSJ serves, particularly the women in these communities. These women are the ones who will suffer tremendously should the Title X regulations be upheld. For this reason, CLSJ joins as *amicus curiae* in this consolidated appeal to the United States Supreme Court.

The **CENTER FOR PUBLIC REPRESENTATION** (the "Center") is a nonprofit, public interest law firm. The purpose of the Center is to provide research and training to women, families, and consumers, to speak out on behalf of these such unrepresented groups, and to take on cases to make sure that their interests are served. A large portion of the Center's efforts is directed at advocating for and protecting the rights of women and it feels that prohibiting federally-funded family planning clinics from providing abortion counseling and referrals will have a direct negative impact on the health of the low income women that the Center represents who would no longer receive vital information on reproductive choices.

The **COLORADO WOMEN'S BAR ASSOCIATION** (the "CWBA") is a nonprofit professional association of more than 600 Colorado lawyers and law students. Open to all attorneys regardless of sex, the CWBA was founded in 1977 to promote the highest standards of the legal profession, to advance justice, to promote, advance, and protect the interests and welfare of women, and to pursue these goals through appropriate legal, social and political action. The CWBA supports reproductive freedom and opposes any effort to restrict the access of women to information necessary to make fully-informed decisions about their health and their lives.

The **COMMITTEE FOR HISPANIC CHILDREN AND FAMILIES, INC.** (the "CHCF") feels that the Title X regulations as they now stand are detrimental to the health of low income Latina women. Many times, Latina women are faced with no other safe alternatives but to use Title X funded clin-

ics. Not allowing Title X funded clinics to give all the information that women need to make reproductive choices is equal to saying they are not allowed to have a choice. Those at CHCF, a founder of the Latino Roundtable on Women's Health and Reproductive Rights, are extremely concerned about the health of poor women.

The **COMMITTEE TO DEFEND REPRODUCTIVE RIGHTS** ("CDRR") is a San Francisco community-based organization with 1,000 members throughout California and several other states. For ten years, CDRR has been dedicated to ensuring women's reproductive freedom by engaging in public education issues concerning reproductive rights and the freedom of all women, including young women.

CHOICE (Concern For Health Options Information, Care & Education) has for the past two decades been a respected and reliable source of information, education and counseling regarding issues of reproductive health. CHOICE is committed to the principle that all people, regardless of age, race, color, gender or income, are entitled to be fully informed of their medical options and to make reproductive or family planning choices free of governmental or private coercion.

DISABLED IN ACTION OF METROPOLITAN NEW YORK is a non-profit civil rights organization advocating for the needs of all disabled individuals, including disabled women of all economic and educational backgrounds, regardless of age, who may choose for whatever reason to have an abortion.

EQUAL RIGHTS ADVOCATES, INC. ("ERA") is a San Francisco-based public interest legal and educational corporation dedicated to working through the legal system to end discrimination against women. It has a long history of interest, activism and advocacy in all areas of the law which affect equality between the sexes. ERA believes that the right to control one's reproductive life is fundamental to women's ability to gain equality in other aspects of society.

The **FEDERATION OF FEMINIST WOMEN'S HEALTH CENTERS** (the "Federation") is a group of women-controlled clinics in the United States that provide birth control and abortion to women. The Federation clinics have also assisted pregnant women in locating adoptive parents. Its clinics provide inexpensive, outpatient abortions, and thousands of lower-income women utilize our services. If the new Department of Health regulations were to go into effect, its abortion clinics would not be able to receive referrals from Title X clinics, thus significantly limiting its ability to provide women with the safe, legal health care they seek. The Federation of Feminist Women's Health Centers strongly support the provision of complete information to women with problem pregnancies to enable each woman to reach her decision about her pregnancy with full informed consent.

The **FEMINIST INSTITUTE** promotes social change that ensures women's autonomy and independence. Its women's health policy and pro-choice projects promote public policies that ensure women's control over their own bodies. The Feminist Institute is concerned that, as women become free from subjugation to patriarchal control within the family, they in turn, not become subject to state control of their reproduction. Control over one's own body without intervention or restriction by the government is fundamental to the exercise of personal autonomy.

The **HISPANIC HEALTH COUNCIL** is a non-profit organization working with low-income Hispanic families, youth and women. For 12 years we have actively advocated on behalf of Puerto Rican women, offering health, education, life skills training, and mutual support in an effort to enhance self-sufficiency and help women regain control over their lives. Most of our clients depend on Medicaid; therefore, Title X regulations would be one more attack on those women who are the least able to respond through institutional and other means.

The **HUMAN RIGHTS CAMPAIGN FUND** (the "Campaign Fund") is a national political and advocacy organiza-

tion representing lesbian and gay Americans in Washington, D.C. Since its founding ten years ago, the Campaign Fund has been committed to working toward full civil rights for lesbians and gay men and ultimately for all Americans. In pursuit of this goal, the Campaign Fund is interested in any governmental actions—legislative, judicial, or administrative—that could impact on civil rights. In addition, its Lesbian Action Agenda is devoted to addressing the political and policy issues of the lesbian community. A survey of its lesbian membership revealed that reproductive freedom is one of three top priority issues for lesbians.

The **INSTITUTE FOR WOMEN'S POLICY RESEARCH** ("IWPR") is an independent, nonprofit, scientific research institution established to respond to the need for women-centered, policy-oriented research. IWPR conducts research that addresses the full spectrum of issues that impact on women's lives—with sensitivity to and consideration for diversity based on race, ethnicity, and class. The focus of the Institute's research is both national and international in scope. In all aspects of its endeavors, IWPR is committed to expanding access, strengthening relationships, and fostering partnerships which strengthen the economic, social, and political well-being of all women. IWPR gives its full support to the *amicus curiae* brief in these cases. IWPR urges the Court to uphold women's right to reproductive choice because, among other reasons, women's right to reproductive choice is a key element in their ability to achieve economic equity.

The **JESSIE SMITH NOYES FOUNDATION** (the "Foundation") is a private foundation committed to preventing irreversible damage to the natural systems upon which all life depends. The Foundation makes grants in the closely interrelated areas of environment and population. The Foundation, therefore, believes that reproductive rights are essential to achieving a balance between environment and population, as well as to the individual dignity of women.

The **LEAGUE OF WOMEN VOTERS OF THE UNITED STATES** (the "LWVUS") is a nonpartisan, nonprofit mem-

bership organization with members in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The LWVUS strongly believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices. The LWVUS has adopted the protection of the right of privacy in reproductive choices as one of its issues for emphasis during its 1990-92 national program.

MADRE is a national women's friendship association that sees the connections between U.S. policy and its effects on women and children in the U.S., Central American and the Caribbean. MADRE's work includes programs which address healthcare and childcare issues which affect women's daily lives. We support reproductive freedom and quality affordable healthcare for all women. We know that poor women and women of color are most affected by restrictive policies. We therefore sign on to the amicus brief in its opposition to the regulations imposed by Title X.

MEN OF ALL COLORS TOGETHER/NEW YORK ("MACT/NY") is a multiracial organization of gay men committed to addressing and combatting racism and discrimination in the lesbian and gay male community, and to providing an environment for interracial relating among gay men. In addition, MACT/NY is committed to being a vital part of the feminist movement, combatting sexism and continuing to be integrally involved in the struggle for reproductive choice and the equality of women.

MOBILIZATION FOR YOUTH HEALTH SERVICES, INC. employs over 600 women, the overwhelming majority of whom are of Caribbean, South American and Asian origin. Given the current American social reality, nearly all of these women suffer from relatively low wages, limited choice, and other disadvantages. If deprived of certain entitlements for all women—entitlements whose elimination more affluent women may more easily endure given their resources—poorer women often will have no other recourse than to use unsafe means within their economic grasp to continue the current

status quo and thereby be frustrated by the loss of the entitlement.

The **MS. FOUNDATION FOR WOMEN** (the "Foundation"), the only national, multi-issue, public women's fund in the country, was founded in 1973 to support women's efforts to govern their lives and influence the world around them. We fund and assist women's self-help organizing efforts and pursue changes in public consciousness, law, philanthropy and social policy. The Foundation directs its resources to activities that break down racial, class, age, sexual orientation and cultural barriers. Through its Reproductive Rights, Health and AIDS Project, the Ms. Foundation is committed to protecting the reproductive rights for all women, especially women of color, low-income women and adolescent women. The Title X regulations threaten the rights of these women and therefore should be considered unconstitutional.

MY SISTER'S PLACE, Yonkers, New York, a refuge from violence in the family, is a non-profit organization founded in 1978. My Sister's Place is dedicated to ending violence and abuse in the lives of women and their children. It provides services to 1,000 women each year. Most of these women are on public assistance. My Sister's Place feels that accessibility to information regarding abortion counseling and referrals to women is imperative to its attempt at empowering battered women and giving them control over their lives—especially in the area of reproductive freedom.

The **NATION INSTITUTE** (the "Institute") is a non-profit organization whose purpose is to undertake and support research, conferences, seminars, publishing ventures, educational programs, and other activities with an emphasis on civil liberties, social justice, and peace and disarmament. The Institute has a fundamental commitment to those rights protected by the speech, press and assembly clauses of the First Amendment. And, since it firmly believes that the best defense of free speech is the exercise of that right, the Institute takes a special interest in extending the audience (and thus enhancing the influence) of independent journals of

political commentary, investigative reporting and dissenting opinion.

The **NATIONAL ABORTION RIGHTS ACTION LEAGUE** ("NARAL"), has over 400,000 members in 41 state affiliates and the national organization. Founded in 1969, NARAL is the largest national organization dedicated solely to keeping abortion safe, legal and accessible. NARAL recognizes that guaranteeing women the full range of reproductive choices is critical to women's autonomy and equality.

The **NATIONAL ASSOCIATION OF COMMISSIONS FOR WOMEN** (the "NACW"), a non-partisan organization, is a membership organization composed of regional, state, county and city commissions created by government to improve the status of women. It was founded in 1970 to give a national voice to commissions for women to create an exchange of information and ideas among government, the private sector and women's organizations. NACW is committed to eliminating discrimination on the basis of sex, race, age, religion, national origin or marital status in all phases of American society furthering legal, social, political, economic and education opportunities for women and promoting the dissemination of information and providing counsel on opportunities for the effective participation of women in the private sector.

The **NATIONAL CENTER FOR LESBIAN RIGHTS** (the "NCLR," formerly the Lesbian Rights Project) is a non-profit public interest law firm founded in 1977 and devoted to the legal concerns of women and men who encounter discrimination on the basis of their sexual orientation, including in the area of reproductive rights. NCLR is a national organization with a strong commitment to increasing access to reproductive rights for women, specifically for lesbians, and has demonstrated that commitment through both litigation and community education. NCLR has appeared as counsel and *amicus curiae* in numerous cases on behalf of women who have been denied access to their reproductive rights, or whose reproductive rights have been restricted by the state.

The **NATIONAL COALITION AGAINST DOMESTIC VIOLENCE**, in commitment to the struggle for reproductive choice and the equality for all women, is signing on as an *amicus curiae* on the brief filed in the consolidated appeal of *Rust v. Sullivan* and *New York v. Sullivan*. This brief challenges the constitutionality of Title X regulations that would prohibit federally-funded family planning clinics from providing abortion counseling and referrals. Every woman regardless of her race or economic level has the right to free speech and the right to make an informed decision about private, medical matters. The Title X regulations would deny this right to women who need it most, low income and adolescent women, many of whom are women of color. These regulations should be deemed unconstitutional as they jeopardize the reproductive health of the 5 million women who utilize federally-funded family planning clinics each year.

The **NATIONAL COUNCIL OF JEWISH WOMEN** (the "NCJW"), founded in 1893, is the oldest Jewish women's volunteer organization in America. NCJW's 100,000 members in more than 200 sections across the United States keep the organization's promise to dedicate themselves, in the spirit of Judaism, to advancing human welfare and the democratic way of life through a combination of social action, education and community service. NCJW is concerned with individual rights and its National Resolutions include working for "services which provide family planning and reproductive choice, regardless of age and ability to pay, while assuring confidentiality."

The **NATIONAL LATINA HEALTH ORGANIZATION** was founded because as Latinas its members felt very strongly that they themselves needed to do something about the quality of their health, about the injustices, neglect and racism they as a group have suffered. Their health issues have not been addressed. Lack of awareness on the part of the medical profession and the language barrier have had a major impact on their access to medical care. Restriction of services and information related to abortion and other reproductive services will jeopardize their health and their lives

even further. The National Latina Health Organization must have all information and services available to them so they can make knowledgeable, educated and healthful choices for themselves.

The **NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY** (the "Center") is a nonprofit national advocacy group based in Washington, D.C. The Center monitors and enforces federal laws to aid homeless and poor persons. In addition, the Center promotes public policies designed to aid homeless and poor persons. The Center believes that further restrictions on federal funding of family planning programs will unfairly and disproportionately burden homeless and poor women. Because the Center also believes that these restrictions are illegal, it joins in opposing them.

The **NATIONAL LAWYERS GUILD** (the "Guild") is a national organization representing over 8,000 lawyers, legal workers, law students and jailhouse lawyers in over 200 chapters throughout the United States. Since its founding in 1937, the Guild has provided legal support to virtually every struggle in this country for economic, social and political justice. The Guild is firmly committed and is working actively to protect the rights of all people, and specifically the right of every woman to have access to all forms of family planning, including safe and legal abortion.

The **NATIONAL MEDICAL ASSOCIATION**, founded in 1985, represents 16,000 Black physicians in the United States, including Puerto Rico and the Virgin Islands. The National Medical Association seeks to foster the enactment of just medical laws and to educate the public concerning all matters affecting public health, especially matters affecting the socio-economically disadvantaged and the health care of women. The National Medical Association supports the common struggle for reproductive choice and the equality of women.

The **NATIONAL ORGANIZATION FOR WOMEN** ("NOW") is a national membership organization of approximately 270,000 women and men in about 750 chapters

throughout the country. It is a leading advocate of women's equality in all areas of life. NOW has as one of its priorities the preservation of the right to reproductive freedom, including abortion.

The **NATIONAL REPUBLICAN COALITION FOR CHOICE** (the "Coalition") is a political committee founded to identify, organize and mobilize pro-choice Republicans, to help elect pro-choice Republicans in primary and general elections and to promote the "choice" position as the official position of the Republican Party. In this way, the Coalition works to ensure the rights of *all* women to reproductive freedom.

The **NATIONAL WOMEN'S HEALTH NETWORK** (the "NWHN") is a public interest organization whose membership, comprising 10,000 individuals and 400 organizations representing 500,000 women, seeks to give women a voice in the health care system of the United States. The NWHN supports women's rights to have complete control over their bodies, which must include the right to make decisions to use contraception, to bear children or to end a pregnancy. The NWHN serves as an advocate for women whose voices are not heard in the creation of health policies at the federal level.

The **NATIONAL WOMEN'S LAW CENTER** (the "Center") is a Washington, D.C.-based legal organization which has been working since 1972 to advance and protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of all women. The heavy burden of the Title X prohibition on abortion counseling and referral falls on the reproductive rights and health of poor women who are disproportionately women of color.

The **NATIONAL WOMEN'S POLITICAL CAUCUS** (the "NWPC") is a nonprofit organization supporting the appointment and election of women to public office. NWPC also supports legislative initiatives at the state and national levels to ensure fairness and equity for all Americans.

NEW DIRECTIONS FOR WOMEN is committed to publishing the many voices of feminism. It believes the diversity of the women's movement must be seen as one of its strengths. New Directions for Women is a national feminist periodical written for feminists and committed to reaching out to those not yet dedicated to a feminist future. New Directions for Women believes that when we understand the pervasive force of sexism, we will act to effect change.

NEW JEWISH AGENDA ("NJA"), founded in December 1980, has chapters in more than 45 American cities. NJA's 5,000 members work to foster traditional progressive Jewish values and to promote Jewish participation in progressive coalitions. In keeping with Jewish tradition, NJA will fight to keep abortion safe and legal for all women. It will work to eliminate the obstacles which prevent women, especially poor women, from gaining control over their reproductive lives.

NEW YORK ASIAN WOMEN'S CENTER is a community-based program to provide direct services for Asian battered women and sexual assault survivors and to educate and organize the public to work towards eliminating the problem of violence against women in the Asian communities. It believes that women have the right to make informed choices about every aspect of their lives, including choices concerning health care. It also believes that women, particularly women of color and poor women, must have true access to quality affordable services in order to exercise their right to make an informed decision.

THE NEW YORK CITY COALITION FOR WOMEN'S MENTAL HEALTH is an educational institution comprised of institutions, individuals, consumers, advocates, and mental health professionals. Our educational purpose is to ensure that women of all classes of society are fully informed and provided with information that is germane to their mental health needs.

THE NEW YORK COALITION OF 100 BLACK WOMEN was organized to act as an advocate for Black women. It provides a forum to explore issues of concern to Black women

and then a vehicle to act upon them. In doing so the Coalition encompasses the full spectrum of empowerment in every arena, including pro-choice issues.

The **NEW YORK PRO-CHOICE COALITION** (the "Coalition") was founded by Merle Hoffman in 1985 as an umbrella organization of individuals and groups committed to the maintenance of legal, safe abortion. The Coalition's purpose is to ensure for all women: safe, legal, accessible abortion; reinstatement and/or continuance of Medicaid funding for abortion nationally; availability of and access to safe, effective birth control and information concerning their reproductive lives and health; the right to choose the timing of motherhood by ensuring the provision of adequate prenatal care and the elimination of sterilization abuse. As an organization committed to women's well-being and the absolute right of women to control their own reproduction, the Coalition is greatly alarmed at the possibility that Title X regulations eliminating abortion counselling from federally funded clinics may be upheld as constitutional.

The **NEW YORK STATE REPUBLICAN FAMILY COMMITTEE** is an educational advocacy organization devoted to promoting policies that foster maximum choice, particularly in matters of health. Founded in 1984, the Committee has over 600 Republican party members, 99 percent of whom reside in New York State. Its membership includes lawyers, health care professionals, business people, educators, philanthropists, and numerous civic and political leaders.

NEW YORK UNIVERSITY LAW WOMEN is an organization committed to promoting an understanding of issues that are of importance to women. We support strongly all measures which promote the health of women, the maintenance of the fundamental right of reproductive choice, the protection of the right of bodily autonomy, and the equality of women.

NEW YORK WOMEN IN CRIMINAL JUSTICE is an organization of women whose members include police, probation and corrections officers; judges, attorneys and social

workers; others who work in the criminal justice system; and inmates and ex-offenders. It strongly objects to regulations that bar the provision of information about abortion in federally-funded family planning clinics. The overwhelming majority of women in prison are low income women who rely on federally-funded family planning clinics for their reproductive health and medical needs; these regulations preclude the dissemination of information necessary for them to make fully informed decisions on abortion, and effectively limits their access to affordable abortion providers. The organization supports the right of women to choose abortion, a right which should not be restricted only to those women who can afford family planning.

The **NORTHWEST WOMEN'S LAW CENTER** (the "Law Center") is a private non-profit organization in Seattle, Washington, that works to advance the legal rights of women through litigation, education, legislation and provision of information and referrals. Protecting women's freedom of reproductive choice is one of the Law Center's priority issue areas. The Law Center has participated in numerous cases involving reproductive rights before the U.S. Supreme Court and other courts both within and outside Washington State.

The **NOW LEGAL DEFENSE AND EDUCATION FUND** ("NOW LDEF") is a non-profit civil rights organization that performs a broad range of legal and educational services nationally in support of women's efforts to eliminate sex-based discrimination, secure equal rights, and preserve reproductive options under law.

The **OLDER WOMEN'S LEAGUE** ("OWL"), a national organization of 20,000 members is committed to achieving economic and social equity for midlife and older women. OWL believes that women have a right to stay in control of their lives from birth to the end of their lives. Accordingly, OWL believes in a woman's right to reproductive freedom.

The **ORGANIZATION FOR OBSTETRIC, GYNECO-LOGIC, AND NEONATAL NURSES** ("NAACOG") is the professional nursing organization for 24,500 OGN nurses. Established in 1969, NAACOG members are nurses and allied health care professionals who practice throughout the United States and its territories, Canada, Germany, and Korea. NAACOG represents the interests of its members whose common concern centers around access to care and quality of care for women, infants, and their families.

The **PATHFINDER FUND** ("Pathfinder"), founded in 1957, is dedicated to ensuring the availability of family planning services for those in need throughout the developing world. Pathfinder's activities include exploring new service delivery mechanisms, building local institutions, training providers, and providing contraceptive supplies. In both the United States and overseas, it addresses public policy issues that affect the availability of safe and effective family planning services.

The **PEMBROKE CENTER FOR TEACHING AND RESEARCH ON WOMEN** at Brown University funds fellowships to support national and international scholars whose research focuses on gender. The Brown Undergraduate Women's Studies concentration is also housed at the Center. The Center believes that every women, rich and poor alike, deserves the right to make fully informed decisions regarding her body. We as a society cannot revert to the days of illegal abortions with the devastating results for women, especially poor women. Health care is a right of all citizens.

The **PROJECT CHOICE: AIDS EDUCATION FOR WOMEN OF COLOR** ("Project Choice") addresses the problem of women who are at high risk of AIDS. Because the child of an HIV positive woman has a 33-50% chance of becoming HIV positive in utero, such women need the right to make a choice about continuing their pregnancy. Project Choice believes it is important that women have control of their

reproductive lives and have access to abortion, especially when they are at risk of passing disease on to their children.

The **PROJECT ON WOMEN AND DISABILITY** is an organization of women committed to ending the oppression of sexism and disability discrimination. Its goals are to provide training and organizing events and activities to encourage women with disabilities to take leadership in the women's movement and the disability rights movement. It is particularly focused on reproductive rights and in gaining control for all women over procreation and parenting.

The **QUEEN'S BENCH BAR ASSOCIATION OF THE SAN FRANCISCO BAY AREA** ("QB") is the oldest women's bar association in Northern California. It was founded in 1921 for women attorneys who were not accepted into the local bar associations. Since then, it has grown into an organization that welcomes both women and men members. Among its many goals and objectives are the preservation and protection of the United States Constitution and the rights found within it including the protection of freedom of expression and the right to reproductive choice.

RACISM AND HOMOPHOBIA IN THE MEDIA PROJECT ("RHIM") is a group of Lesbian and Gay activists working to improve the images of Gay and Lesbian People of Color in the media. Stressing the need for positive images and knowledgeable reporting, RHIM is working to fight racism and other forms of prejudice and discrimination, wherever they restrict a person's freedom or capabilities.

RADICAL WOMEN, founded in 1967, is an international, multi-racial organization of working women and students dedicated to the causes of women's equality and radical social change, and has been fighting for unrestricted abortion rights since the organization's inception. Over the years Radical Women has continued to work on the abortion issue, particularly as the issue affects poor and working women and women of color. These are the women who suffer most from unwanted pregnancies, who die most often from botched, illegal abortions, and who can least afford unwanted chil-

dren. Radical Women branches across the United States have been instrumental in organizing clinic defenses, forums, and petition campaigns to counter attacks on abortion rights.

The **RAINBOW LOBBY, INC.** is a grassroots citizens lobby based in Washington, D.C., with over 200,000 members and supporters nationwide. The organization lobbies primarily on legislation regarding democracy and election reform, and has launched a legislative campaign to improve the quality of the 1992 presidential elections in the areas of candidate selection, debates, and voter registration. The Rainbow Lobby is committed to removing the political and legal barriers that keep progressive, pro-choice positions from being expressed in the electoral arena and in public policy.

REPRODUCTIVE HEALTH SERVICES ("RHS") is a not-for-profit corporation with its principal place of business in St. Louis, Missouri. RHS is a federal tax-exempt organization under § 501(c)(3) of the Internal Revenue Code. It provides a full range of reproductive services to its client population, including pregnancy testing, birth control, abortion and a full range of adoption services. It presently provides approximately 50% of all abortions performed annually within the State of Missouri. RHS firmly believes that the challenged regulations clearly and punitively violate the constitutional rights of women seeking to make educated choices about reproduction and that the challenged regulations have a disproportionately adverse impact upon indigent women, who are often in the greatest need of counseling and advice.

The **SAN FRANCISCO WOMEN LAWYERS ALLIANCE** is a progressive, activist bar organization, founded in 1983. It is a grass roots organization; the general membership decides what issues are addressed and how they are addressed. Members have the opportunity to make a significant impact on issues affecting women. It prides itself on its ability to act on current women's issues with promptness and timely efficiency.

SANTA FE HEALTH EDUCATIONAL PROJECT is interested in the outcome of this case because it is the

founder of the Coalition for the Protection of Reproductive Rights in New Mexico and feels women's reproductive rights are threatened. The purpose of the Coalition for the Protection of Reproductive Rights is to generate discussion and widen understanding of reproductive health issues. These include: health information, contraception, assistance in dealing with unwanted pregnancies and the right to the choice of whether to bring a pregnancy to term or not, pre-natal care and day care. With such rights being threatened and access to services and information, especially regarding abortion being reduced, the present is a critical time to mobilize.

The **SEX INFORMATION AND EDUCATION COUNCIL OF THE U.S.** ("SIECUS"), is a twenty-five year old national not-for-profit organization headquartered in New York. SIECUS affirms that sexuality is a natural and healthy part of living and advocates the right of individuals to make responsible sexual choices. SIECUS provides information services to professionals, students, and members of the general public across the United States. SIECUS deplores any attempts to undermine women's reproductive health rights. The SIECUS Board of Directors has passed a position statement supporting the right to choose abortion, which states in part, "SIECUS believes a woman is entitled to have full knowledge of alternatives available to her and to have complete and unbiased information and counseling concerning the nature, the consequences, and the risks, both of the abortion procedure, and of pregnancy and childbirth." SIECUS believes that the February 1988 regulations would deny women the right and the ability to make responsible choices.

The **SOUTHERN CALIFORNIA WOMEN'S LAW CENTER** (the "Law Center") was established in 1989 as the first law center in Southern California solely devoted to addressing the civil rights of women and girls. The Law Center has identified the following priorities for its work: reproductive rights, sex discrimination in employment, sex discrimination in education, family law, domestic violence and child care. Protection of the right to reproductive freedom contained in the federal Constitution, which, by definition, must include

access to information concerning abortion services or referral, is one of the most significant legal issues facing women in Southern California, as well as the rest of the country.

STUDENTS AND YOUTH AGAINST RACISM is a national organization based in New York City with chapters nationwide whose women members include students and youth from many communities—Black, Latino, Asian, Native American, White, lesbian, disabled, working, unemployed, poor and heads of households. It organizes against racism and all forms of discrimination in this society. It strongly holds that full reproductive rights and quality health care is the right of all young people and that access to and information about safe, legal, affordable abortions and birth control must be guaranteed and available to all youth, with Medicaid funding for those who need it.

STUDENTS ORGANIZING STUDENTS ("SOS") is a nationwide student organization committed to reproductive freedom and full reproductive rights for all women. Currently, nearly 80% of all women who obtain abortions fall between the ages of 15 and 29; this age group of young women makes up our growing constituency through which we are advancing the reproductive freedom movement. SOS organizes and mobilizes junior high, high school and university students on the state, local and campus levels. To date, S.O.S., in less than a year of existence, has established chapters and affiliates on over 130 campuses throughout the nation. S.O.S. does not view abortion as a single issue, but as part of a broad health and reproductive rights agenda that includes freedom from sterilization and reproductive abuses, access to birth control and comprehensive sex education, adequate pre- and post-natal care and childcare, AIDS education and activism, parenting and reproductive rights for lesbian women and gay men, and free abortion on demand. S.O.S. opposes all attempts, whether by the Supreme Court, the President, the United States Congress, state legislatures, or anti-woman/anti-choice organizations to strip women of their rights to full reproductive freedom. It views all women's freedom to full reproductive choice as its goal; without full

reproductive freedom for all women, regardless of race, creed, color, financial situation or sexual orientation women are not yet free.

The **TUCSON WOMEN'S COMMISSION** was founded in late 1975 by the mayor and council of the City of Tucson to assist women in attaining full equality of opportunity in all aspects of life. The Tucson Women's Commission maintains that the public policy in the best interest of women is to support a full range of options, information, and services so that every woman has the ability to make her own decision about when, whether, and under what conditions to bear a child.

The **UNION OF AMERICAN HEBREW CONGREGATIONS** ("UAHC") represents over 1.3 million Reform Jews and 850 congregations across the United States. The National Federation of Temple Sisterhoods ("NFTS") represents a network of 100,000 women of Reform Judaism in over 600 local Sisterhoods throughout the United States. The Central Conference of American Rabbis ("CCAR") is the major body of approximately 1500 Reform rabbis. Throughout the history of these organizations, they have steadfastly maintained the principles of freedom of speech, freedom of religion and women's rights, believing that the free exercise of one's constitutional rights is essential to the preservation of American democracy. The UAHC, NFTS and CCAR join this brief as *amici curiae* to advocate a woman's right to be informed of all of her reproductive options in the case of an unexpected pregnancy. The governmental coercion or constraint of the information given by a reproductive health worker not only violates the freedom of expression of the counselor, but also denies millions of poor women the opportunity to make an educated choice based upon their own personal religious beliefs and moral guidelines.

UAW/DISTRICT 65 was founded in 1933 among workers in small dry goods establishments on Manhattan's Lower East Side. District 65's reputation as a front-liner in social struggle goes back to anti-fascist activities in support of

Republican Spain and continues through the Scottsboro Boys trial, Selma, Birmingham and Howard Beach.

The **UNITARIAN UNIVERSALIST ASSOCIATION** is a voluntary religious association of 1,000 congregations in the United States and abroad dedicated to the principles of a free faith, the right to an individual conscience, and to the promotion of the inherent worth and dignity of every person. The Unitarian Universality Association has long advocated the right of every woman to decide whether she should bear a child. It believes that the issue of abortion is morally complex and thus must be decided by each individual and must remain a legal option. The Unitarian Universality Association firmly believes that circumscription or prohibition of the right to terminate a pregnancy by qualified medical practitioners is an affront to human life and dignity. In the last two decades, the Unitarian Universality Association has repeatedly affirmed its belief that a woman of any age or marital or economic status has the right to have an abortion upon medical/social consultation of her own choosing.

The **UNITARIAN UNIVERSALIST WOMEN'S FEDERATION** ("UUWF") is an independent organization for Unitarian Universalist women that works for a world of justice and equality in which *all* women are respected and their worth and dignity recognized. The UUWF mission, and its work, are built on the principles of free faith, the right to an individual conscience, and the promotion of the inherent worth and dignity of every person. For more than 15 years, the UUWF has affirmed the right of any woman of any age or marital or economic status to gain information and make her own choices about family planning and to have an abortion at her request upon medical/social consultation of her choosing.

The **UNITED CHURCH BOARD FOR HOMELAND MINISTRIES**, founded in 1957, with roots reaching back to the anti-slavery movement in 1846, has strongly endorsed a woman's right and responsibility to a full range of reproductive options. The organization has been particularly con-

cerned that poor women have the same range of options as women who can afford medical care. It, therefore, is dismayed at the possible prohibition of abortion counseling and referrals in federally-funded clinics.

The **UNITED SYNAGOGUE** is an association of approximately 800 congregations in the United States and Canada.

VOICES IN ACTION, INC. is the non-profit international organization of incest and child sexual abuse survivors and pro-survivors dedicated to prevention and recovery through networking support and education.

VOTERS FOR CHOICE is a national, independent, bipartisan, and pro-choice political action committee. In order to preserve access to safe and legal abortion for all women, Voters For Choice helps to elect pro-choice candidates to federal and state level public offices.

The **WOMAN'S LAW PROJECT ("WLP")** is a nonprofit feminist legal advocacy organization dedicated to advancing the legal and economic status of women. The WLP believes that the right to reproductive choice is an essential component of women's ability to play an equal role with men in this society and has engaged in extensive litigation and public education designed to protect women's legal right to abortion. Since its founding in 1974, the WLP has challenged in the courts a wide variety of state statutes designed to restrict abortion rights, including the Pennsylvania statute invalidated by this Court in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986).

The **WOMEN AND AIDS COALITION** feels that safe, legal abortion is absolutely essential in our pluralistic, troubling society. The increasingly compromised immune system of so many of our citizens, women particularly, demands that health care providers help to offer the safest medical options at our disposal.

WOMEN FOR RACIAL AND ECONOMIC EQUALITY ("WREE"), founded in 1977, is a national organization with local chapters and members-at-large throughout the United

States. WREE's program is the Women's Bill of Rights, a statement of the demands that will enable women to achieve equality. The goals of WREE include eliminating discrimination against women in every area of life and eliminating the racism in our society that affects their lives, particularly of African-American women and other women of color. A key point in WREE's Women's Bill of Rights is "the right to reproductive freedom including federally-funded birth control and abortion upon demand, sex education, and an end to experimentation and sterilization abuse."

The **WOMEN-IN-CRISIS COMMITTEE** of the Episcopal Diocese of Massachusetts provides education networking, and advocacy regarding women's issues, particularly crisis issues, and gives grants to secular agencies which serve women in crisis. The Committee has been active in pro-choice work since 1983, with particular concern for justice issues such as public funding.

WOMENSPACE is a non-profit organization that works to advance opportunities and enhance the well-being of women in the Greater Cleveland community. WomenSpace reaffirms its commitment to the right of every woman to determine for herself the issues of family planning and reproduction.

WOMEN USA is a national organization dedicated to research, education and activities related to the impact of public policies on the status of women, including such issues as equal rights, participation and representation in policy-making, employment and education opportunities, voter registration, population and family planning services, environment and development, and other policies, practices and programs affecting women and girls.

WOMEN'S BAR ASSOCIATION OF ILLINOIS ("WBAI") was founded in 1914 for the purpose of promoting and fostering the interests and welfare of women and women attorneys and to maintain the honor and dignity of the legal profession. WBAI's 1000 members have long campaigned for individual rights and liberties, including the right of women to make reproductive decisions free from govern-

mental interference. WBAI has filed briefs *amicus curiae* before this Court on behalf of parties whose rights were in jeopardy.

The **WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS** was incorporated and exists for the purpose of promoting and enhancing the interests of women in the legal community by encouraging professional interaction and exchange of ideas among its members and between its members and other individuals, groups and organizations within or without the Commonwealth and within or without the United States, and further for the purpose of promoting and enhancing the interests of all women by encouraging interaction, education and the exchange of ideas among its members and between its members without the Commonwealth and within or without the United States. The Women's Bar Association states that it is an advocate of the rights of women under the laws and rules of the Commonwealth and has an interest in this appeal. There are important policy considerations and social ramifications of any decision regarding this matter.

WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK ("WBASNY") (which includes: the women's bar associations of Bronx County, Brooklyn, Capital District, Central New York, Mid-Hudson, Nassau, Orange-Sullivan, Queens, Greater Rochester, Rockland, Staten Island, Westchester, and Western New York) is an organization of over 3,000 attorneys throughout the state. Founded in 1980, its stated purposes include the following: to cooperate with, aid and support organizations and causes which advance the status and progress of women in the society; to facilitate the administration of justice; and to cultivate the science of jurisprudence. The members of WBASNY support the principles enunciated in *Roe v. Wade*, including the recognition of the constitutionally guaranteed right to privacy.

The **WOMEN'S CITY CLUB OF NEW YORK, INC.**, founded in 1916, is a membership organization concerned with contemporary societal problems and with promoting the

welfare of men, women and children by advocacy of an efficient government and a just legal system. The organization is concerned about this case because it feels that the principle established in *Roe v. Wade* was a step forward in establishing the freedom of women for domain over their own bodies and that any step backward is a challenge to that freedom and the equality of women in our society.

The **WOMEN'S EDUCATIONAL CENTER, INC.**, a non-profit organization in Cambridge, Massachusetts, exists to help empower women, particularly victims of abuse, by offering crisis counseling, referral information, and support groups. The new Title X restrictions jeopardize the rights of women to make informed decisions. The proposed restrictions not only impinge on a doctor's obligation to provide comprehensive information to patients, but also threaten the very principles of a democratic society. We believe that withholding information is a manipulative action which results in powerlessness and subservience. For these reasons, The Women's Educational Center, Inc. is strongly opposed to these new restrictions.

The **WOMEN'S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND ("WERLDEF")** is a non-profit corporation organized to ensure that women are educated about their rights under the law. WERLDEF supports the right of women who seek family planning services from Title X clinics to obtain information and medical care that will enable them to make an informed decision regarding their treatment and care. WERLDEF believes that the best decision is made when a woman is educated about the full range of choices legally and medically available to her. Because most of the women who seek family planning services from Title X clinics live in poor areas, WERLDEF is concerned for the health and safety of individual women who will turn to back-alley abortionists or attempt to abort their own fetuses if they are no longer able to obtain comprehensive and reliable health care from Title X clinics.

WOMEN'S HEALTH ACTION AND MOBILIZATION ("WHAM!") is a direct action group committed to demanding, securing and defending absolute reproductive freedom and quality health care for ALL women. Founded in 1989 after the *Webster* decision, WHAM! coordinates clinic defense in the New York metropolitan area, and organizes demonstrations, civil disobedience, workshops, trainings and educational forums to call attention to and confront a variety of women's health issues, including Title X restrictions, parental consent laws, access to drug trials and experimental treatments for women with AIDS/HIV, and the Catholic Church's increased attacks on abortion rights. WHAM! believes that access to quality health care is a fundamental human right.

WOMEN'S INTERNATIONAL RESOURCE EXCHANGE ("WIRE") is a small, feminist, non-profit collective that publishes and distributes material by and about Third World Women.

The **WOMEN'S LEGAL DEFENSE FUND** ("WLDF") is a tax-exempt non-profit membership organization founded in 1971 to challenge sex-based discrimination and to advocate for women's rights in society. WLDF believes strongly that to participate fully and equally with men in society, all women must have the right to decide for themselves whether and when to carry their pregnancies to term.

WOMEN'S PROJECT is a community based non-profit organization committed to the elimination of sexism and racism. Since 1981, the Women's Project has assisted women in organizing around these issues: violence against women, children, and people of color; women's economic issues, especially those affecting low income women; and social justice issues.

The **WOMEN'S STUDIES PROGRAM** at Hunter College, City University of New York, is composed of some sixty full-time affiliated faculty members and teaches some 2,000 students each year. Most of its students are young single women, many of them low-income and some who are single

mothers attempting to support their families and to get an education in order to improve their own and their children's lives. Access to safe, reliable reproductive health services is absolutely essential for these women, who depend on the availability of abortion counselling and referrals as one part of the social insurance infrastructure for remaining in school. It is the strong position of the Women's Studies Program that such access is and must remain part of every woman's personal and liberty rights. The survival of the Program's students and the work it does as educators literally depends upon it.

The **WOMEN'S STUDIES PROGRAM** at Smith College is committed to the education of women and education about the history, experience and cultural contributions of women of all races, classes, cultures, and ethnic backgrounds. The history of women has shown us that women cannot be equal partners in society unless they are assured of the right to full information about health issues, particularly concerning reproduction, and the right to make decisions for themselves. To deny full information about abortion to women seeking medical help in federally-funded family planning clinics would mean that full information about personal medical decisions would become a privilege of the wealthy. It would mean that the reproductive health and the ability to make medically informed decisions about private health matters would be denied to the five million women using federally-funded family planning clinics each year. The ability to pay should not determine access to information crucial to one's health and the ability to make reasoned choices about difficult, personal issues.

The **WOMEN'S STUDIES PROGRAM** at Yale University, founded in 1979, is an interdisciplinary program which aims to make gender the center of analysis in academic inquiries. The Women's Studies Program believes strongly in women's equality and their right to reproductive freedom.

WORKERS WORLD PARTY is a national multi-chapter organization based in New York City whose members include

working and poor women, youth, lesbians, seniors, disabled, unemployed and women on fixed incomes. It holds that every woman must be guaranteed choice, privacy, and access to and information concerning all aspects of reproductive health. It believes all women must have access to all procedures and information concerning reproductive matters and comprehensive health care, including safe, accessible, affordable abortion and birth control. To deny access to all available procedures and information to any women, especially the poor, youth and minority women, is discriminatory and unconstitutional. Every woman has the right to make informed choices about her life in all matters, including pregnancy, one of the most personal issues women face.

WORLDWATCH is a private, non-profit research organization based in Washington, D.C. The Institute was founded in 1975 to inform policymakers and the general public about the interdependence of the world economy and its environmental support systems. Included in its mission is to broaden the recognition both of access to family planning as a basic human right and as part of "sustainable development."

The **YALE JOURNAL OF LAW AND FEMINISM** was created in the Fall of 1987 to fill a void in feminist theory and legal scholarship. It hopes that the Journal will inject the feminist perspective into mainstream legal scholarship and will bring the legal world and its effects on women's lives into the view of a wide-ranging audience. It also wants to help expose and analyze both issues bearing specifically on women and the feminist struggle and to look at the world as a whole through a gender-conscious lens.

The **YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF U.S.A.** ("YWCA"), a national membership organization whose mission is the empowerment of women and the elimination of racism, strongly supports reproductive freedom of choice. Because the Department of Health and Human Services' regulations restrict that freedom, and run counter to First Amendment protection, the YWCA supports the position taken in this *amicus curiae* brief.

ZERO POPULATION GROWTH is a national, nonprofit organization with over 30,000 members. Founded in 1968, it is working to achieve a sustainable balance of the earth's population, environment and resources. The organization supports voluntary efforts to stabilize population growth through education and advocacy programs.